Nos. 85-1963 and 85-2006

In The

Supreme Court of the United States

October Term, 1986

Supreme Court, U.S.
FILED
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TYLER PIPE INDUSTRIES, INC.,

Appellant

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Appellee.

NATIONAL CAN CORPORATION, *et al.*,

Appellants,

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF WASHINGTON

JOINT APPENDIX

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Appeal Docketed—Case No. 85-1963, May 30, 1986
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Probable Jurisdiction Noted October 6, 1986

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES IN CASE NO. 85-1963

1. May 20, 1981—Appellant Tyler Pipe Industries, Inc. files Complaint for Declaration of Invalidity of Tax Assessment and other relief in the Superior Court of the State of Washington for Thurston County. Docket No. 81-2-00731-4.

2. March 22, 1982—Stipulation filed by the parties that the Complaint filed in the Superior Court of the State of Washington for Thurston County is now an action for refund by the Appellant.

3. October 12, 1982—Appellant files Amended Complaint.

4. June 15, 1984—Memorandum Opinion by the Superior Court of the State of Washington for Thurston County denying Appellant's claim for refund.

5. August 8, 1984—Memorandum Opinion by the Superior Court denying Appellant's Motion for Reconsideration.

6. October 24, 1984—The Superior Court enters both Order Denying Motion for Reconsideration and Findings of Fact, Conclusions of Law, and Judgment.

7. November 9, 1984—Notice of Appeal to the Supreme Court of Washington filed.

8. March 6, 1986—The Supreme Court of the State of Washington sitting en banc affirms the Superior Court's decision denying Appellant's claim for refund. Docket No. 51110-1.

9. March 27, 1986—Supreme Court of Washington mandates case to the Superior Court of the State of Washington for Thurston County for proceedings in accordance with its decision affirming the trial court.

10. April 15, 1986—Appellant files Notice of Appeal to the Supreme Court of the United States with the Supreme Court of the State of Washington.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

NO. 81-2-00731-4

TYLER PIPE INDUSTRIES, INC.,
a Delaware corporation,
Plaintiff,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,
Defendant.

AMENDED COMPLAINT—FOR REFUND OF TAXES AND INTEREST PAID AND OTHER RELIEF

(Filed October 12, 1982)

By way of amendment to the Complaint for Declaration of Invalidity of Tax Assessment, Injunction and Other Relief previously filed herein dated May 28, 1981, and for cause of action against Defendant, Plaintiff states as follows:

1. *Notice of Appeal.* This Amended Complaint shall constitute a Notice of Appeal, if and as required by RCW Section 82.32.180, which governs tax refund actions.

2. *Plaintiff.* Plaintiff is a Delaware corporation which does not engage in business in the State of Washington, maintains no office in the State of Washington and transacts no business in the State of Washington. Plaintiff's principal office and place of business is in Tyler, Texas.

3. *Defendant.* Defendant is the Washington Department of Revenue which has assessed and collected the bus-

iness and occupation taxes with respect to which refund is sought herein.

4. *Business of Plaintiff.* Tyler Pipe owns several subsidiaries which are engaged generally in the manufacture and sale of pipe and plumbing products. In this case, the taxes for which refund is sought were assessed with respect to the gross receipts from sales in Washington of products manufactured and sold by Tyler Pipe Industries of Texas, Inc. (hereinafter referred to as "Tyler Pipe"), a Texas corporation, which maintains its principal office and place of business in Tyler, Texas and which manufactures and markets many types of plumbing pipes and fittings through separate manufacturing and sales divisions within the Plaintiff's corporate family. Neither Plaintiff nor Tyler Pipe maintain or ever have maintained an office, plant or any other place of business in the State of Washington nor is either of such companies qualified to do business in the State of Washington. Neither company has or ever has had any employees located in or acting in the State of Washington, nor has either company sent any materials or products into the State of Washington except by U.S. Mail or independent common carrier. Neither company solicits sales in the State of Washington except through instrumentalities of interstate commerce, such as advertisements in national trade magazines and occasional mailings from out of Tyler, Texas. Neither company maintains or ever had maintained any assets or inventory in the State of Washington.

Sales of Tyler Pipe products to Washington customers are, and during the audit period were, handled through two sales representatives: Ashe & Jones, Inc. and Bridgeport Sales, Ltd. The sales representatives act independently of

the Plaintiff, Tyler Pipe and each other. They are not under the supervision or control of Tyler Pipe and do not receive any marketing, administrative or financial assistance or counseling from the Plaintiff or Tyler Pipe. The sales representatives on their own solicit sales of Tyler Pipe products, and each sales representative also handles the plumbing products of various other firms and companies.

Most orders of Tyler Pipe products by Washington customers, usually wholesale plumbing or similar firms, are placed with Tyler Pipe in Texas by mail or telephone through Tyler Pipe's independent sales representatives in Seattle; some orders, however, are placed directly by the customer with Tyler Pipe. Orders are subject to the acceptance of Tyler Pipe in Texas. Neither Tyler Pipe nor Plaintiff has ever sent any personnel into the State of Washington for purposes of soliciting or accepting orders from customers. The products are shipped to the purchasing customer from Tyler, Texas by common carrier and the purchasing customer is billed by mailed invoice from Tyler, Texas. Customers' payments are made directly to Plaintiff; Plaintiff then credits the appropriate Tyler Pipe sales division. The sales representatives do not handle payments or assist in their collection. Complaints are handled directly between Tyler Pipe and the customer and are resolved over the telephone or through the mail. During the period of time at issue, neither Tyler Pipe nor Plaintiff ever sent any service personnel into the State of Washington.

Neither Tyler Pipe nor Plaintiff has ever utilized the Washington court system or other state services to collect any delinquent accounts or for any other reason than the

initiation of this present action contesting the State of Washington's taxing authority.

5. *Assessment and Payment of Tax.* The Washington Department of Revenue issued Assessment No. 071980 against Plaintiff under the Washington Business and Occupation Tax. The Assessment, which was for the period of January 1, 1976 through September 30, 1980, asserted a total tax liability with respect to the sale of products in Washington by both Tyler Pipe and a separate subsidiary of Plaintiff which manufactures and sells specialized plumbing products, Wade, Inc., in the amount of $123,159.00, including interest. After exhausting its administrative remedies and ultimately being denied preliminary injunctive relief by the Washington Supreme Court, the Plaintiff paid the full amount of the Assessment on or about March 12, 1982, which included $105,421.00 of business and occupation tax, $29,229.00 of interest, and $232.99 of court costs, for a total payment of $134,882.99. (See Exhibit A hereto.)

As indicated above, taxes were assessed with respect to sales of products not only by Tyler Pipe, but also with respect to products sold by Wade, Inc., a separate subsidiary of Plaintiff. For purposes of this action, no refund is being sought with respect to those taxes paid with respect to Wade, Inc., which represent approximately $4,531.50 of the total amount paid. Refund is, however, sought with respect to all taxes and interest allocable to sales of products by Tyler Pipe, which have been determined by Plaintiff as follows:

Tax Year	Tyler Pipe's Washington Sales	Allocable Taxes and Interest Assessed and Paid
1976	$3,374,417	$120,884.43
1977	4,012,550	23,749.58
1978	5,078,759	27,927.41
1979	5,873,029	28,985.94
1980	3,900,664	17,171.06
TOTALS	$22,239,419	$118,718.42

Plus allocable post-assessment interest of $11,633.08.

Accordingly, refund is sought herein in the total amount of $130,351.49.

6. *Violation of Laws.* The above-described taxes and interest should be refunded to Plaintiff, as hereinafter requested, for the following reasons:

6.1 The assessment of taxes herein violates the Due Process and Interstate Commerce Clauses of the United States Constitution since there is not a sufficient nexus or contact with the State of Washington to constitutionally impose the tax and since the amount of tax is not fairly related to the benefits, if any, received by Plaintiff and/or Tyler Pipe from the State of Washington.

6.2 Said assessment violates the Washington State Constitution since it deprives Plaintiff of property without due process of law.

6.3 The assessment of the taxes against Plaintiff in this case violates the Department of Revenue's own regulations purporting to define sufficient local nexus for application of the business and occupation tax in the case of sales or goods originating in other states to persons in

the State of Washington since the in-state activity of the Plaintiff and/or Tyler Pipe is not significantly associated in any way with the sales into the State of Washington under Rule 193B (WAC 458-20-193B).

6.4 Said assessment violates RCW 82.04.430(6) since such statute specifically allows a deduction for business and occupation tax purposes for amounts derived from business in the State which the State of Washington is prohibited from taxing under the United States Constitution or the laws of the United States.

6.5 The said assessment violates the Federal Interstate Income Tax Law, 15 U.S.C. § 381, et seq. (1959), which generally provides that no state shall have power to impose a net income tax on any income tax derived from within the state by any person from interstate commerce if activity of the potential taxpayer is limited, as in this case, to selling through independent sales representatives in the taxing state and certain other activities.

6.6 The Washington Business and Occupation Tax Law (RCW 82.04.220) which imposes a tax upon the gross receipts from the sale of products in the State of Washington, as applied to the Plaintiff in this case, violates the Interstate Commerce Clause and Due Process Clause of the United States Constitution and federal statutory law, specifically U.S.C. § 381.

WHEREFORE, Plaintiff prays as follows:

1. That this court order the Washington State Department of Revenue to refund the amount of $130,351.49 representing interest and taxes payed by Plaintiff as herein alleged, including interest on such amounts provided by law.

2. That Plaintiff recover costs and attorney's fees incurred herein.

3. For such other and further relief as the court deems proper in the premises.

4. That the pleading be deemed amended in conformance with the proof of the trial of this case.

DATED this 20 day of September, 1982.

CARTANO BOTZER LARSON & BIRKHOLZ

By: _____
Thomas C. McKinnon

By: _____
Thomas A. Sterken
Attorneys for Plaintiff

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

No. 81-2-731-4

TYLER PIPE INDUSTRIES, INC.,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

BE IT REMEMBERED that on Monday, November 21, 1983, the above-entitled and numbered cause came on for hearing before the HONORABLE CAROL A. FULLER, Judge of the Superior Court, held at the Thurston County Courthouse, Olympia, Washington.

APPEARANCES

FOR THE PLAINTIFF: MR. THOMAS C. McKINNON

FOR THE DEFENDANT: MR. JAMES R. TUTTLE
Assistant Attorney General

*(p. 2) (Defendant's Exhibits Nos. 1 through No. 44, inclusive, were marked for identification.)

The Court: The Court calls the matter of Tyler Pipe Industries, Incorporated, against the State of Washington. Present in the courtroom is counsel for the plaintiff, Tyler Pipe, Mr. McKinnon. Present also is counsel for the state, Mr. Tuttle.

The Court has had an opportunity to read the trial memoranda. I understand that there is a motion in limine at this time.

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* Transcript of proceedings has been reproduced exactly as certified, including typographical and spelling errors.

Mr. McKinnon.

Mr. McKinnon: Yes, Your Honor. Before me proceed into that, I would also like to introduce to the Court a member of the Texas Bar, Mr. Peter J. Turner, a member of the law firm of Gardere & Wynne in Dallas, Texas.

I am requesting that he be allowed to sit at the counsel table for his trial, for the limited purpose of assisting. He is not going to take place in the trial. I asked counsel, and he says there is no problem.

The Court: And the Court will authorize that he sit at counsel table.

Are you ready to proceed with the motion in limine?

Mr. McKinnon: Yes, I am, Your Honor.

The Court: Mr. McKinnon.

(p. 3) Mr. McKinnon: At this time, Your Honor, plaintiff is moving the Court for an order in limine requesting that the defendant, its attorney and all witnesses, be directed to refrain from bringing up or testifying in any manner concerning the affairs of Wade, Incorporated.

Wade, Inc. is a Virginia corporation, as indicated in the affidavit which was submitted in connection with said corporation—or with this motion. It's a separate legal entity, although a subsidiary of Tyler Pipe Industries, Inc. It is engaged in a different business than some of the other entities involved in this suit.

Specially it's engaged in manufacturing of specification drainage products, some of which are manufactured by Tyler Pipe Industries of Texas, and Tyler Pipe Plastics Company, and some of which are purchased by Wade from affiliated manufacturers.

The business and occupation taxes which were assessed against Wade are not in issue in this lawsuit. Although Type Pipe is not conceding that there is sufficient nexus to warrant the measurement of, and the imposition of said taxes, we have not included in this particular matter, or we are not seeking a refund of the taxes paid by Wade.

There were specifically $134,832.89 of tax paid, (p. 4) including the Wade figure. The Wade figure is a minimal portion of that total amount; approximately $4,300. The balance, totalling $130,010.56 were paid by Tyler Pipe for the activities of Tyler Pipe pursuant to the audit conducted by the state.

Now, the basis for this motion in limine is that it's admitted by virtue of the discovery conducted that the state is going to attempt to in effect bootstrap its argument by alleging that the activities involving Wade warrant the imposition of the tax on Tyler Pipe.

It is conceded that Wade has during the audit period, which is the years 1976 through the first nine months of 1980, maintained a small inventory in the State of Washington, which is maintained in Seattle at the offices of its independent—of an independent sales representative, Mechanical Agents, Inc., has nothing to do whatsoever with Tyler Pipe and the sale of articles manufactured by Tyler Pipe of Texas.

The legal authority for this particular motion is found in *General Motors v. Washington*, 377 U.S. 436, which we submit in effect held that each separate division of General Motors—this was a State of Washington case—that it had to be shown that there was sufficient contact or nexus for each separate division.

Also *Norton Co. v. Department of Revenue*, 340 U.S. (p. 5) But more importantly, by virtue of state law, specifically RCW 82.04.030 adopted by the department, Wade must be treated as a separate legal entity, and its activities would have no bearing on the imposition of the alleged—or the taxes against Tyler Pipe.

And I would call the Court's attention to WAC 458-20-203, which provides as follows:

> "Each separately organized corporation is a 'person' within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals."

So we have two distinct legal entities involved here, Tyler Pipe Industries and Wade, Inc. They must be treated separately. They are recognizezd in the law as separate, and distinct legal entities, and this case has nothing to do with the activities of Wade, Inc.

For these reasons I submit the motion is proper and should be granted. Thank you.

The Court: Mr. Tuttle.

Mr. Tuttle: Thank you, Your Honor.

The Court: Let me ask a question before you start.

(p. 6) Is it possible for the Court to reserve the matter of the motion in limine until the conclusion of the testimony?

And the reason I ask that is perhaps there is really not very much testimony that is going to be introduced having to do with Wade, and perhaps it would be clearer

at that time to the Court whether or not Wade is indeed a separate subdivision. I have only your representations, and, of course, what's in the affidavit as this point to go on, and after testimony I would have a great deal more perhaps.

I don't mean to burden the proceedings, though. If there is really a great deal of testimony involved, then I probably should make that ruling at the very beginning.

Mr. Tuttle: I would submit that that's the case, that you should, because I think it's going to come up again and again. We're going to have a witness from Mechanical Agents, which is the Wade representative, and it's woven through the facts of the whole case. As far as we're concerned there is a considerable relationship. These are just different corporate subsidiaries of Tyler Pipe, the taxpayer.

So I think that you really do have to address that issue at the outset.

(p. 7) The Court: At the outset.

Mr. Tuttle: I think you should rule on it now, yes.

If I might add just one thing, particularly in response to Mr. McKinnon. I have read a lot of these nexus cases, out-of-state-seller cases, and I have yet to even see one that even limits that including of evidence along the lines that is suggested. The evidence always comes in, and the court gives the appropriate weight, and considers whether or not the activities of the so-called separate entity can be separated out.

But as we have pointed out in our memorandum, once a taxpayer submits itself to a state's taxing jurisdiction,

as Tyler Pipe has done to the extent of paying taxes and not requesting a refund for its Wade sales, then it has the —the taxpayer then has the burden to disassociate that local—that conceded local activity from its other activities to show that those sales are in no way related.

There is no case that I have ever seen that says that the taxpayer can meet the burden by getting the evidence excluding at the outset. These are all very fact intensive cases. All that evidence has to come in so the court can make its decision on the basis of (p. 8) the evidence.

The Court: Mr. McKinnon, do you have anything in rebuttal?

Mr. McKinnon: Yes, with reference to the issue Your Honor raised.

You certainly would have the prerogative, and Mr. Tuttle has indicated to me all the exhibits that he intends to offer, and the great majority of them have to do with Wade, but in response to his particular points again I would submit that under the law they are separate legal entities, and they are to be treated as such, and the WAC provision clearly specifies that.

Now, what's the relevancy of the activities of Wade, and the small inventory it maintains, when that is not in issue. What is in issue are the activities of Tyler Pipe. Again I submit that it's proper. He has to show for each separate legal entity that the requisite nexus is met, and the meeting of the nexus with respect to Wade does not prove that that requisite nexus or connection is met with respect to Tyler Pipe.

What I'm afraid of, and one of the main purposes of the motion, I submit that most of his case is going to have

to do with Wade, which I submit by virtue of the authorities cited, has nothing to do with the real (p. 9) issue. That is whether Tyler Pipe has the minimal connection necessary which would warrant the imposition of the taxes, and it's going to drag this thing out longer than would be necessary.

* * *

(p. 15) The Court: Mr. McKinnon, your first witness.

Mr. McKinnon: Yes, Your Honor. Before we proceed to the witness, I would like to read into the record certain facts which were admitted as a result of a request for admission of facts submitted by plaintiff in this matter. The admitted facts are as follows:

"Plaintiff is a corporation established under the laws of Delaware. It is registered to do business in the State of Texas and maintains its principal place of business in Tyler, Texas. It is engaged in the business of selling pipe, plumbing and related products.

2. Tyler Pipe markets, sells and distributes, cast iron, pressure and plastic pipe and fittings, and sells and distributes specification drainage products. Most of Tyler Pipe's customers, including those located in the State of Washington, are wholesale plumbing or similar firms. Tyler Pipe owns several subsidiaries (p. 16) which are engaged generally in the manufacture, marketing and sale of pipe and plumbing products.

3. All sales which are the basis for the B&O taxes imposed in this case are sales of cast iron, pressure and plastic pipe and fittings which are marketed by a division of Tyler Pipe or by a wholly-owned subsidiary of Tyler

Pipe which has since been merged into Tyler Pipe and continues to exist as a separate division within Tyler Pipe.

4. The taxes for which refund is sought in this case were assessed with respect to the gross receipts from sales by Tyler Pipe to Washington customers of products manufactured by Tyler Pipe Industries of Texas, Inc., or by Tyler Plastics Company, both of which are wholly-owned subsidiaries of Tyler Pipe. Tyler Pipe Industries of Texas, Inc., produced all of the cast iron pressure pipe and fittings sold by Tyler Pipe for delivery in Washington and Tyler Pipe Plastics produced all the plastic pipe and fittings sold by Tyler Pipe for delivery in Washington. Neither Tyler Pipe of Texas, Inc. nor Tyler Plastics engaged in any marketing. sales or distribution activities."

This was admitted:

"Subject to the qualifications that the taxes for which refund is sought were 'measured by' rather than (p. 17) 'assessed with respect to' the referenced gross receipts, and subject to the further qualification that the last sentence refers to activities in Washington State.

Tyler Pipe has never utilized the court system of the State of Washington to collect any delinquent accounts or for any other purpose."

This was also admitted:

"Subject to the qualifications attendant to this lawsuit.

Tyler Pipe has no ownership or other interest in Ashe & Jones, Inc."

This was admitted:

"Subject to the qualification that the 'interest' referred to means an ownership interest.

The principal means by which the sales representative communicates with Tyler Pipe is by telephone.

The sales representative is paid solely on a commission basis according to the volume of sales of Tyler Pipe products in its geographic area. Tyler Pipe does not compensate, nor does it exercise any authority or control over, any employees or agents of the sales representative."

This was admitted:

"Subject to the qualification that the compensation and exercise of authority or control referred to in (p. 18) the second sentence mean 'direct' compensation or exercise of authority or control.

Tyler Pipe products are shipped to the purchasing customer from Tyler, Texas by common carrier or U.S. Mail. The purchasing customer is billed by Tyler Pipe by mailed invoice from Tyler, Texas. Customers' payments are made directly to Tyler Pipe."

This is admitted:

"Subject to the qualification that some Tyler Pipe products are shipped from a warehouse in Washington State."

Which, parenthetically, I'll say they are the Wade, Inc. separate corporation's products.

"All remittances from Washington customers during the audit period were mailed directly to Tyler, Texas or to

Tyler Pipe's lock box at First National Bank in Dallas, Texas.

No checks, drafts or other payments from Washington customers were sent to the sales representatives during the audit period.

Admitted—Subject to the qualification that only checks, drafts or other payments payable to Tyler Pipe are included.

The inside sales force's primary responsibility is to receive orders by telephone from customers nation- (p. 19) wide.

Once an order is accepted, it is first submitted to the data processing center of Tyler Pipe at its headquarters in Tyler, Texas. An invoice is prepared on an independent form bearing the name of 'Tyler Pipe Industries' and the company's logo, with the division name being added by the computer. The same invoice form is used for billing by all divisions."

This was admitted:

"Subject to a denial that the invoice form is an 'independent' form (whatever that means), and subject to denial of any implication that an order is necessarily accepted in Texas.

The invoice identifies Tyler Pipe Industries, Inc. as seller. No other sales documents are prepared. The original and two copies of each invoice are sent to the customer. One copy is retained and the Sales Department's file; one copy is sent to the Credit Department; one copy is sent to the sales representative. Tyler Pipe then credits the appropriate Tyler Pipe sales division."

This is admitted:

"Except for the second sentence (which is denied), and subject to the qualification that the word 'and' in the fourth sentence means 'in'."

(p. 19-a) And at this time, talking with counsel this morning, we are stipulating that the amount—exact amount of the refund sought is in the total sum of $130,010.56.

Is that correct, Mr. Tuttle?

Mr. Tuttle: Yes.

Mr. McKinnon: That is the end of the stipulation.

At this time we'll call Mr. Horan.

(p. 20) (Witness sworn.)

JAMES B. HORAN

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. McKinnon:

Q Would you state your full name for the record, please, and spell your last name?

A James B. Horan, H-o-r-a-n.

Q What is your residence address, Mr. Horan?

A 2926 Keaton, K-e-a-t-o-n, Street, Tyler, Texas.

Q And what is your occupation?

A Senior Vice-President Marketing, Tyler Pipe Industries.

Q How long have you been employed by Tyler Pipe?

A 28 years, and a few weeks.

Q Can you just briefly give us your educational background?

A I finished through the third year in senior college.

Q And briefly relate the functions you have served at Tyler Pipe over the years.

A I have had varied job descriptions, and titles, beginning with, in 1954, when I first came with Tyler Pipe as assistant to the manager of the Tyler Specialty Company, (p. 21) a wholly owned subsidiary of Tyler Pipe Industries.

Q How long did you serve in that capacity?

A Through '56, at which time the manager resigned from the company to take other employment, and I was promoted to that position, and held the position through 1968—'58 excuse me.

Q Then what position did you assume?

A Tyler Specialty Company was dissolved, and merged into Tyler Pipe and Foundry Company at that time, and through the devices of catalogue rearrangement became catalogue sections of Tyler Pipe and Foundry Company, and I became manager of the Specification Drain Sales, Section 7—Division 7 of the Tyler Pipe and Foundry Company.

I held that position, and then included—promoted to include the Soil Pipe Division, as sales manager of Tyler Pipe and Foundry. Then held that position through 1960, at which time I was made sales manager of all sales divisions of Tyler Pipe and Foundry Company.

In 1963 I was promoted to an officer of the company as vice-president of Marketing. In 1977, December, I became senior vice-president of Marketing of Tyler Pipe Industries, which position I hold today.

Q Can you briefly tell us what your duties are as senior vice-president of Marketing?

A Well, as senior vice-president of Marketing I am challeng- (p. 22) ed with the responsibility to monitor the activities of the marketing arm of the company, and help to make decisions about the activities of that department.

Q Briefly give us a summary of the nature of Tyler Pipe's business, just exactly what does Tyler Pipe do, and the type of products that are involved.

A Tyler Pipe's products are principally used in the construction of plumbing and—let me put it differently—fresh water and waste water plumbing piping systems for domiciles, commercial buildings, office buildings, factories, plants, and so forth.

Q Are there any divisions within Tyler Pipe of Texas, or does that—just briefly describe the type of business Tyler Pipe of Texas performs.

A Well, Tyler Pipe of Texas, through its manufacturing processes, speads itself into several different divisions of the company in Texas. The Utilities Division, which manages the sale of those products peculiar to waterworks distribution. That is the fresh water side of my opening remark.

The DWV Division manages the sale of castiron and plastic drainage, waste, and vent piping and fitting products for use in the removal of waste water from domiciles,

offices and so forth. The Wade Division manufactures and distributes, rather, products auxiliary (p. 23) to plumbing piping systems.

Q Is Wade a separate corporation?

A Yes, it's a separate corporation.

Q Where is it incorporated?

A Delaware, I think. I'm not straight on that.

Q Now, are the items that are sold by the Utilities Division, and the DWV Division, manufactured by Tyler Pipe of Texas?

A Yes.

Q Okay. What does "DWV" stand for, by the way?

A It's a useful expression of drainage, waste, and vent piping systems, almost all of which vent to gravity. Whereas the Utilities Division, most of those products are under pressure while in operation.

Q Where is the manufacturing plant of Tyler Pipe of Texas located?

A It's located near Tyler, Texas.

Q And are all of the goods that are sold by the Utilities and the DWV Division manufactured in Texas?

A Yes.

Q How long has Tyler been in existence?

I want you to take into consideration any predecessor corporations, too.

A The founder of the company took control of a company called the Tyler Iron Company, in Tyler, in 1935. It

(p. 24) made things not at all required in the plumbing industry. So in 1937 it began to produce castiron soil pipe, and fittings, and auxiliary items, and offered them for sale to the plumbing trade.

Q Over the years has Tyler Pipe been involved in the manufacture and marketing of any unique type of products?

A I would think that the main marketing feature of Tyler Pipe has been over the period, its forefront activities in the unique new different types of product.

Q Can you briefly tell us about some of these products?

A In 1958 we produced the first ten feet lengths of castiron soil pipe ever made in the United States. It was very unique. It required what I call an industrial revolution, and that pipe was traditionally made by hand only in five foot lengths to suit the ability of the machinery to produce the finished product. It was sand rammed by hand once again into molds, and was a very slow process. Productivity soured.

Tyler went to Sweden and brought back a process called the Akers-Stykbruk process, where we spun material into iron metal cylinders and extracted a piece of pipe very shortly thereafter.

Q What was the significance of this particular product to the industry?

Mr. Tuttle: Your Honor, I would like to (p. 25) let the witness testify, but I don't see the relevance of this. I'll stipulate they make some good products. Why do we have to get into the description?

Mr. McKinnon: I'm just briefly asking him about some of these products for the purpose to show that in fact they are a nationwide corporation, and because of their type of products they are able to engage in the interstate marketing and sale of these products.

The whole point we're getting to is how necessary are the local sales reps. That is what it comes down to, is the key.

The Court: Objection overruled. I'll ask the court reporter to read back the last question.

(Record read.)

Q (By Mr. McKinnon) You have described the ten foot pipe. What is the significance of that to the industry of that particular product?

A Well, since the pipe is installed in various lengths, then in every case where the pipe could have been longer than five feet, it was restricted by product from all manufacturers. Tyler came on the market with a pipe that stretched out an additional five feet, and joined 12 inch, or 15 inch pipe with lead and oakum to bring forth a finished joint. Therefore we cut out many joints (p. 26) that the contractors were forced to make that they did not want to make.

Q Did that increase Tyler's sales?

A Our sales on that product, machinery, soared to require seven days of production. We sold that pipe in market places not represented by Tyler, because the desirability was such that we were contacted by telephone, mail, whatever, direct contact; please, can't I buy some of that ten foot pipe.

We took the pipe to the marketplace by the device of exhibitions, shows, contractors annual conventions, where we took a booth, so forth, to spread the word as rapidly as possible.

Q Do you have other types of products that are unique to the industry?

A Probably even equally, if not more significant, by virtue of the activity, we were able to retain the tolerance of the product, both inside and out, to the point where we could replace a lead and oakum joint with a joint made of rubber compound. That reduced the cost to the contractor, the installation cost.

I might add, as an aside, we had a two year lead on all competition on the ten foot soil pipe, and a two to three year lead on all competition on the plastic, because we sought a patent protection on the gasket, and (p. 27) all competitors stayed away from that until the patent was granted.

However, they did not have the productive capacity or control of their product dimentions to bring forth, and a compression gasket at that particular time.

Q Going now to the question of how Tyler Pipe advertises its products, and keeping in mind not only the two products you just mentioned, but other products, can you briefly describe the process that Tyler goes through?

A A very significant fact, I think is—to regress—when we moved the Tyler Specialty Company into Tyler Pipe, and produced a new catalogue, it was different and unique from the rest of the industry in that it was a loose-leaf binder, and permanently registered with all

holders, so additional incremental changes, or additions to our product line could be rapidly disseminated to all interested parties by a current updated mailing campaign.

Secondly, our advertising budget has been very larged in comparison to others, in that we have advertised in all trade magazines, some regional magazines, some what we call house—for instance, the North Carolina Heat and Cooling Contractors has a little magazine of their own that describes the activities of that organization, and from time to time we expose ourselves with (p. 28) advertisements either describing the products, or the good name of Tyler Pipe, and so forth.

Q What about—you mentioned trade fairs, and exhibitions. How does Tyler Pipe handle its advertising and marketing at such functions?

A There are, throughout the year, regularly scheduled conventions, or trade shows. Conventions usually do not have exhibits. So you go to see customers from all over a region, or the United States, but the trade shows, which, once again, are regulary scheduled, Tyler Pipe takes various booth spaces, and determines which products it wants to show at that particular show, whether or not we'll have a convention suite to entertain after hours some of our customers, and so forth.

Q Are those, the trade shows you were referring to, national in scope?

A Some of them are. Some are regional in scope, some are cities. The American Society of Plumbing Engineers has local chapters throughout the country. We have some as simple as a table top seminar, and you take

your local representation, or the home office, certain unique products, to exhibit those products to the people who attend.

Q Are the attendees at most of these meetings, do they come from a national or regional basis?

A The larger ones, yes, national; international sometimes.

(p. 29) Q Now, calling your attention to the audit period involved in this particular lawsuit, which is, I think it will be stipulated, is the years 1960 through the first nine months—or '76, excuse me, through the first nine months of '80, how were Tyler Pipe products handled in the State of Washington.

I'm just talking about Tyler Pipe products.

A Well, they were—orders were received from customers in the State of Washington at Tyler's facilities in Texas, or to its representation here in the state.

Q What was that representation in the state?

A Well, we have two representatives in the timeframe; Ashe & Jones, who handled the Utilities Division, and DWV sales, and Mechanical—I'm sorry, I have forgotten the last word.

Q Mechancial Agents?

A Mechanical Agents, who handle our Wade Division only.

Q Okay. But I'm just calling your attention to the Utilities and DWV.

They were handled by Ashe & Jones?

A Ashe & Jones.

Q For a particular territory?

A Principally the State of Washington.

Q Did they also go outside the state?

A State of Montana.

(p. 30) Q Does Tyler have any ownership interest in Ashe & Jones?

A No, sir.

Q You know by whom Ashe & Jones is owned?

A Not precisely, although I think the principals are John Ashe and Glen Jones.

Q What type of materials were provided Ashe & Jones by Tyler Pipe?

A As in marketing materials?

Q Yes.

A Well, we would have, over the years, provided them with catalogues, principally; some fliers, brochures, broadsides. Things of that nature.

Q How are those materials provided, or how are they sent?

A By mail, or parcel post.

Q You send any material—well, strike that.

Who principally are your customers, say, in the State of Washington, during the audit period, to your knowledge?

A In the divisions we're discussing here?

Q Yes.

A Well, we have two lines of customers. The Utilities Division does business with wholesale utility suppliers, and the DWV Division does likewise through wholesale plumbing supply companies.

Q You send materials to—to these types of customers that (p. 31) you just testified to?

A Yes.

Q And what type of materials would you sent to them?

A We would send to them also catalogues, brochures, broadsides, advertising cut-sheets, through our regular mailing list held in Tyler, Texas.

Q How are those items sent?

A Sent by mail, or parcel post, depending on the bulk of the product.

Q Has Tyler ever maintained, owned, operated, or rented, any type of offices in the State of Washington?

A No.

Q What about—to your knowledge, has Tyler ever advertised in the State of Washington, utilizing local TV, radio, or billboards?

A No.

Mr. Tuttle: Objection. No foundation. How would he even know?

Mr. McKinnon: Well, I think I'm entitled to ask him.

The Court: Would you like to voir dire the witness?

VOIR DIRE EXAMINATION

By Mr. Tuttle:

Q Mr. Horan, do you have knowledge each time an advertise- (p. 32) ment is placed by Tyler Pipe, and where it's placed?

A. Yes.

Q Each ad is personally run by you?

A Run by me? No.

Q I mean, is placed in front of you for review by you.

A The advertising is a yearly thing. We decide what we want to do, what trade magazines, what product, whether it's black and white, four color, whether it's one division, or another, and so forth. And I have final say, yes, and what the budget will be for the Advertising Department, so forth.

So do you review that in detail, or just put your stamp on it?

A I review it in detail.

Q You would have d-ne that for each of the years of the audit period, '76 through '80?

A Yes.

Mr. McKinnon: Vocalize your answer.

The Witness: Yes. Even down to working on the literature, working the verbage, with your advertising agency in Dallas. They would be in my office. I don't like the way that reads. Let's revise this, and strike this.

Q (By Mr. Tuttle) You review the ads as well?

A The trade magazine ads. That is the highest cost in (p. 33) advertising. Truck ads, single page ads, half page ads, quarter page ads, bleed ads.

Mr. Tuttle: Nothing further.

The Court: Mr. McKinnon.

Mr. McKinnon: Could I have the last question I asked him.

I take it you have withdrawn your objection.

Mr. Tuttle: Yes.

Mr. McKinnon: Can I have that read back, please, and if there was an answer given, have that read back.

(Record read.)

DIRECT EXAMINATION (Cont'd.)

By Mr. McKinnon:

Q Can you briefly describe the process that an order goes through involving the Utilities Division, and the DWV Division, confining the answer to the audit period here in the State of Washington?

A Upon presentation of that order at headquarters, Tyler Pipe, Tyler, Texas, the order is then analyzed for, first of all, its content, and secondly its gross weight, and then that order is transmitted to a computerized typewriter, and a set of pages are prepared. And those pages consist of such things as shipping order documents, invoicing documents, and so forth.

(p. 34) That order is then—those pages necessary to the Shipping Department are transmitted to the Ship-

ping Department with a shipping date, and the order is gathered in accordance with that shipping document, and notice is given back to the Sales Department that that order is prepared for shipment either totally, or perhaps with certain line items in a negative balance.

So if we can't find that particular product in the yard, prior to shipment, that becomes and generates a backorder, and the whole process is repeated until such time as the original order is shipped complete.

Q Does the independent sales rep have any authority to accept an order?

Mr. Tuttle: Objection. That calls for a legal conclusion. What does "accept" mean?

The Court: Rephrase your question. You might ask what their procedures are with the independent rep.

Q (By Mr. McKinnon) Can you briefly describe the procedures with the independent rep, with the placement of an order?

A Well, if the order itself suits the parameters of acceptance from Tyler Pipe, then we just simply accept the order from the representative, if he is the purveyor of that order to our headquarters, and produce the documents I have described, and ship the material.

(p. 35) I don't guess I quite understand.

Q Let me rephrase that.

Does the independent rep have authority to bind the company for an order?

A No, sir.

Mr. Tuttle: Objection. Again it calls for a legal conclusion. That authority would be stated in a document, a contract, or something else, but it calls for a legal conclusion.

The Court: The objection is sustained. You may want to simply rephrase your question.

(Plaintiff's Exhibit No. 45 was marked for identification)

Q (By Mr. McKinnon) Handing you what has been marked for identification as Plaintiff's Exhibit No. 45, would you please tell the Court what that is?

A That document has a "Guide to Ordering" headline, and followed by "Conditions of Sale."

Q Where does that document come from?

A It's a part and parcel of the catalogue distributed to one and all.

Q When you say "to one and all," do the independent sales reps receive that type of catalogue?

A Yes.

Q And would Ashe & Jones have had that catalogue?

(p. 36) A Yes.

Q During the audit period?

A Yes.

Mr. McKinnon: I'll offer 45.

The Court: Any objection?

Mr. Tuttle: Let me just ask a couple questions.

The Court: Surely.

VOIR DIRE EXAMINATION

By Mr. Tuttle:

Q This guide and the conditions of sale, this page, as such, was included in the catalogue throughout the audit period; is that correct?

A That, or one of like nature, yes. I can't say if that specific one is that ole, but one of a like nature.

Q I don't see a date on it. Do you know if there would have been any changes during the audit period?

A Not substantially.

Q What changes would there have been?

A Only—really only in graphics.

Q So, to your knowledge, say, the conditions of sale, as stated here in —Plaintiff's 45, remains substantially unchanged from 1976 through 1980?

A Yes.

Mr. Tuttle: No more questions at this (p. 37) time.

The Court: Any objection to the admission?

Mr. Tuttle: No.

The Court: What has been marked for identification as the Plaintiff's Exhibit No. 45 will be admitted into evidence.

(Plaintiff's Exhibit No. 45 was received in evidence.)

DIRECT EXAMINATION (Cont'd.)

By Mr. McKinnon:

Q Calling your attention to the fifth paragraph of Exhibit 45, under "Conditions of Sale," could you just, for the record, read what that says?

A "All orders are subject to approval of our Home Office before final acceptance. Cancellation or changes in orders are not allowed without our consent. We reserve the right to refuse, cancel or backorder items not in stock or not manufactured by us, whether or not they are shown in this catalog."

Q After a sale has received approval from Tyler, briefly describe the process which the company goes through then in shipping the particular item that has been sold.

A Once again, from this transmission to the point, Tyler, Texas, we convert that order into documents. Satisfied (p. 38) to our requirements from the documents, we gather the material, and make shipment in accordance with the customer's requirements.

Q Those destined for the State of Washington during the audit period, to your knowledge how were they shipped?

A Shipped by common carrier, principally.

Q Is there any particular reason why the products are sold by Tyler Pipe Industries of Texas to Tyler Pipe Industries?

A I'm stuck on that one. I'm sorry.

Q Is there any ICC regulation?

A Either ICC, or perhaps SEC, since we were at one time a stock company.

Q To your knowledge, during the audit period, has any Tyler employee ever resided within the State of Washington?

A No.

Q To your knowledge, during the audit period, has Tyler ever sent any employees in the state for the purpose of designing, adapting, or repairing any product?

A No.

Q To your knowledge, during the audit period, has Tyler ever sent any service personnel into the State of Washington?

Mr. Tuttle: Objection. What is meant (p. 39) by "service personnel"? We don't have a foundation as to what that term means.

The Court: Please lay a foundation.

Q (By Mr. McKinnon) Does Tyler employ service personnel who repair or handle the products once they have been sold?

A No, sir.

Q During the audit period has Tyler Pipe paid taxes imposed or assessed by the State of Texas?

A Yes, sir.

(Plaintiff's Exhibits No. 46 and No. 47, were marked for identification.)

Q (By Mr. McKinnon) Handing you what has been marked for identification as Plaintiff's Exhibit No. 46, would you please tell the Court what that document is?

A This document is headed "Tyler Pipe Industries, Incorporated, State of Texas Franchise Taxes."

Q And for what period are the franchise taxes?

A 1976 through 1980.

Q Do you have personal knowledge of how that document was prepared?

A Yes, sir.

Q How was it prepared?

A It was prepared from records maintained at Tyler Pipe Industries, Tyler, Texas, for the payment of such taxes.

(p. 40) Q And handing you what has been marked for identification as Plaintiff's Exhibit No. 47, would you please tell the Court what that is?

A This document is headed "Tyler Pipe Industries, Ad Valorem Taxes," with subheadings of "School, State and County, Junior College, and Total," for the years 1976 through 1980.

Q Do you have personal knowledge of how that document was prepared?

A Yes.

Q How was that prepared?

A In the same fashion, by the use of records maintained at our headquarters in Tyler, Texas.

Mr. McKinnon: I'll offer 46 and 47.

Mr. Tuttle: I have to object to the relevancy. Maybe Counsel can explain the relevance.

Mr. McKinnon: Well, the relevance is, Your Honor, we get to the question of the proper apportionment, and the constitutionality of the taxes, and the purpose for the offering of this document is to show during the audit period Tyler Pipe was paying taxes in Texas on the products, or on the manufacturing, et cetera, the products that were ultimately sold to the State of Washington. So that we have in effect the double taxation.

(p. 41) Again, it just goes to the question of apportionment, and the fairness of the imposition of the B&O tax by the state, when all of the manufacturing, et cetera, took place in Texas on these products, and the plaintiff was paying taxes on these products, and I certainly think it's relevant to that point.

The Court: What have been—go ahead.

Mr. Tuttle: Your Honor, there is no showing of what the franchise taxes are paid for. That is what the incidence of the tax is, whether it's a proper tax, an income tax, a license, what, No. 1. And particularly with reference to the ad valorem tax I think it's well stated that the payment of property tax in one state does not create an unconstitutional double taxation as far as payment to another state, measured by the sales, the incidence being the privilege of making sales in another state.

So there is no—unless it were shown that these were taxes paid on the privilege of making the sales in the State of Washington, or perhaps on income from those sales, this is totally irrelevant. It's just another separate tax.

* * *

(p. 42) (Plaintiff's Exhibits No. 46 and No. 47 were received in evidence.)

* * *

(p. 43) By Mr. McKinnon:

Q Mr. Horan, during the audit period did Tyler Pipe maintain any inventory in the state of Washington?

A No, sir.

Q Has Tyler Pipe compiled a comparison of sales made to customers in the State of Washington during the audit period, comparing those that came through an independent sales rep vis-a-vis those that came through a telephone?

A Have we done so?

Q Yes.

A Yes.

Mr. McKinnon: Perhaps I could ask Counsel. I know he's intending to put this in anyway. If we could have a stipulation on these figures.

(p. 44) Mr. Tuttle: That would be Defendant's Exhibit 21 you're referring to. I think. It's been marked.

Mr. McKinnon: Yes.

Q (By Mr. McKinnon) Let me just ask you at this time, Mr. Horan, there is an attachment to Exhibit—Defendant's Exhibit 21.

Are these the figures that were compiled by Tyler Pipe?

A. Yes.

Q I would just ask you at this point in time to read into the record the comparison between the two figures.

The Court: Just so I'm clear, this is the comparison of sales that came through sales reps, as compared to those that came by telephone directly to Tyler Pipe?

The Witness: Yes. The manner of transmission.

The Court: Right.

The Witness: From sales representatives in the State of Washington for the year 1976, 1,371. 1977—

Mr. Tuttle: Your Honor, excuse me. May I have voir dire for a second on this?

The Court: Surely.

(p. 45) VOIR DIRE EXAMINATION

By Mr. Tuttle:

Q Were these prepared under your own supervision?

A My own supervision, yes.

Q Do they include sales for the Wade Division, or just —

A Yes.

Q This would be all sales to all Washington customers?

A Yes.

Mr. Tuttle: Thank you, Your Honor.

The Court: Surely.

The Witness: 1978, 1,442.

The Court: All right, you identified sales representative calls, 1,371. I have 1976.

The Witness: 1977, 1,615; 1978, 1,442; 1979, 1,693; first nine months of 1980, 1,507. And the total number of all orders for delivery in Washington during the audit period, that is all orders, 1976, 1,953; 1977, 2,329; 1978, 2,522; 1979, 2531—

The Court: Would you give me that figure again.

The Witness: 2,531. First nine months of 1980, 2,103.

Mr. McKinnon: Thank you.

The Witness: Yes, sir.

(p. 46) DIRECT EXAMINATION (Cont'd.)

By Mr. McKinnon:

Q During the audit period, Mr. Horan, did Tyler Pipe employ any people who promoted sales throughout the United States?

A Yes.

Q Can you briefly describe the nature of the activities performed by these people?

A By their title, they were denoted as sales promotion representatives. That means to us that they have no responsibility to secure orders, or to secure customers. Their prime function is to display to the marketplace a product unique in Tyler Pipe's kit, if you please, and further, where the requirement for a plumbing code variation is developed by this product change, they go to seek

at the plumbing code authority level approval of the product in that particular plumbing code.

Q Were these—or where do they reside, the people you just referred to?

A Three of them reside in Tyler, because that was their home, their domicile, and one in Denver, Colorado.

Q During the audit period, in order to make a customer aware of Tyler Pipe products, or or the—and services available in the State of Washington, was it necessary to utilize an independent sales rep?

(p. 47) A No, sir.

Q Why?

A Through the device of our catalogue, and its permanence, we are able to present to the customer, real or potential, a complete description of our entire product line, and services, and policies, through that catalogue device, and subsequently promotion pieces such as brochures and the like.

Q During the audit period, in the State of Washington, was it necessary, in order to make a sale, to utilize the services of an independent rep?

A To make a sale?

Q Yes.

A Not in every case, no.

Q Why is that?

A Well, by virtue of Tyler Pipe's activities in the other 49 states, by its relationship with multi-chain supply houses, and plumbing contractors, and even archi-

tectural engineers, we are able to display our product, point out its benefits, accept orders for the products with delivery instructions, without the total requirement of a local representation.

Q During the audit period did Tyler make sales internationally?

A Yes, indeed.

(p. 48) Q Could you briefly describe the type of sale?

A It was determined that Tyler Pipe had an opportunity to move its products into the international marketplace by virtue of the development of major foreign nations, such as Saudi Arabia, and Iran at the time, Iraq, and Jordan, and so on. We developed a disc company in accordance with federal statute, and exposed our product, and offered them for sale in all markets in the world.

Q Were any independent sales reps utilized?

A No. In this case we chose to develop a direct relationship with those potential and real customers in every case, and have at this moment no representation off our shore.

* * *

CROSS EXAMINATION

By Mr. Tuttle:

Q Mr. Horan, who is David Smart?

A David Smart is an employee of Tyler Corporation, located in Dallas, Texas. I think his title is assistant treasurer.

Q Tyler Corporation, is that the same as your employer?

A It's the parent company of my employer.

Q Is it the holding company?

(p. 49) A Yes.

Q Does he — I notice that he signed the interrogatory answers, all three sets of the answers to defendant's interrogatories.

Do you have any idea how he would come to do that?

Mr. McKinnon: Well, what's the relevance of that?

The Witness: No.

Mr. McKinnon: Your Honor, he signed as an officer — he's also an officer of Tyler Pipe Industries. I just wonder where we're going on that.

Mr. Tuttle: That is what I didn't hear, that he was an officer of Tyler Pipe Industries.

The Court: The objection is overruled.

Q (By Mr. Tuttle) That is your testimony, though, he's an officer of Tyler Pipe Industries?

A Yes. I'm going to — guardedly. I don't know what title he has at Tyler Pipe Industries, frankly.

Q Would his position be above or below yours?

A It would be parallel to mine, I would assume.

Q So he would have authority to act for Tyler Pipe Industries; is that right?

A Yes.

Q Your answer was "yes"?

A Yes.

(p. 50) Q Can you describe in a little more detail what the differences are between the products of the DWV, the Drain-Waste-Vent Division, and what I understand is a subdivision of the Wade Division?

A Okay.

Mr. McKinnon: Your Honor, just for the record, and in view of the motion, I am going to have an objection. I would like it to be a continuing objection as to testimony involving anything concerning Wade on the grounds of relevancy and materiality.

The Court: All right.

* * *

(p. 61) The Court: It occurs to me it doesn't make any difference whether they operate through ten different companies, or fifty, or a hundred. That certainly would not delineate the character of an association between Tyler Pipe and Wade. I think it would almost be a given, or agreed to, that there are many subdivisions of Tyler Pipe, and Tyler Corporation, but I'm not sure that it makes any difference how many there are.

* * *

(p. 70) The Court: All right. What has been marked for identification as the Defendant's Exhibit No. 5 will be admitted into evidence.

(p. 71) Mr. Tuttle: Could the witness be handed Defendant's 42.

Q (By Mr. Tuttle) Again, Mr. Horan, would you review that.

It consists, I believe, of the actual salary job descriptions, I believe they are called, for the same positions that the duties were listed in the previous exhibit.

A Yes.

* * *

(p. 72) Q (By Mr. Tuttle) I would like to call your attention to—on Defendant's 42 to the description for the DWV and Wade regional sales manager, which, I think, is right about the third or fourth down.

Now, that has references throughout to — let's — would you read the function?

A "Function: Under general direction of the vice-president — DWV Sales, performs a combination of selling and promotion duties pertaining to Wade products."

Q Could you explain why that says "Wade products"?

A No, I cannot. It's poorly written. There is an omission here that should be included, so as to include the DWV.

Q There are a number of other references in there, too. For example, 5 says: "Assist Wade sales manager

with territory sales analysis and projections; 6, Keeps Wade sales manager advised on competitive price conditions and keeps abreast of all situations affecting sales and marketing of Wade products."

A The language should be corrected then.

Q That would include then Wade and DWV; is that correct?

A Yes.

* * *

(p. 79) Q Oh, Tyler Pipe Industries, the Delaware corporation, is the parent. Then Tyler Pipe Industries of Texas is sort of the manufacturing arm?

A Manufacturing arm of the Marketing Division, if you please. It sells products, castings, if you please, to Wade. Wade being another company.

* * *

(p. 85) Mr. Tuttle: Could the witness be handed Defendant's 15. That consists of Interrogatory No. 13, (p. 86) and the answer thereto.

Q (By Mr. Tuttle) That interrogatory asked for the Washington contracts. I think it means "contacts," or was meant to mean "contacts" — it appears that the answer interpreted it that way — but would it be your testimony today that the three companies; that is Ashe & Jones, Bridgeport Sales, and Mechanical Agents, handled all sales functions pertaining to your products during the audit period?

A During the audit period.

Q Your answer is yes?

A Yes.

• • •

(p. 93) Mr. Tuttle: If counsel's objecting to the procedure, maybe I should ask Mr. Horan to put in his own words how did you receive market information about the Washington market.

The Witness: How did I personally?

Q (By Mr. Tuttle) How did Tyler Pipe, or any subsidiary —

A Receive market information about the Washington market? Principally through its representation or its customers (p. 94) in the marketplace.

Q By "representation," you're referring to sales representatives?

A Those current representatives of our company.

Q What kind of information would that be?

A It could have to do with the general business activity in the state. It could have to do with the competitive conditions within the state in the pricing of products of like nature.

Q For example, a competitor beating you on a price?

A Yes, that sort of thing, uh-huh.

• • •

Q So I understand, you would receive information about the competitive situation, particularly prices; is that correct, and about what else, about things that are going on as far as business?

(p. 95) A Personnel changes, the sale of our customers perhaps, activity at their level. I'm talking now all the way down to contractors. They are bellwether contractors. There is always a close relationship to pipe. We watch their good health. The Boeing Company's good health and activities indicates to us what downstream our activity may consist of.

Q You get that information from the sales representative?

A Or other sources. Yes, that is one of our sources.

Q Other sources would be what?

A Our wholesale customers, and other — our sales people operating in this marketplace.

Q Other sales people?

A Yes.

Q Who would that be?

A Well, someone friendly to us, who has a non-competiting line might interject a comment along here that we may have missed.

Q What would you say your chief source of that information would be?

A Our chief source would be our representation.

* * *

(p. 103) Q Is the report — the answer indicates there is a report that is prepared monthly.

A There are reports prepared monthly, yes, quarterly and annually, accumulatively, and in dollars and cents, in tons or units of sales, and whatever fashion is of interest to the auditing person, if you please.

Q And that information is obtained from the sales representatives?

A Oh, no. I'm sorry. That's obtained internally from sales records.

Q I see. And that is all sales?

A Actual sales.

Q I heard you referring to finding out from the sales representatives about orders, prospective orders.

A That usually is in the area of forecasting events, either future or distant future events; forecasting.

Q Are the sales representatives then the source of that information, primarily?

A Yes

Q Your answer is yes?

A Yes.

Q How is that information important as far as the future? How is that important to you?

A Well, I must say it's probably subliminally computed into someone's mind as to the events that may or may not (p. 104) transpire in any given territory in any given time frame.

Q I was thinking, for example, I believe there was testimony in one of the depositions that it would perhaps

allow you to forecast how much inventory to build, adjustments in your production; would that be true?

A Well, I think I'm right in saying that our inventory positions are based on past history — immediate past history, daily past history practically, and, therefore, our forecasting for inventory position is more long time, how many tons do you think we ought to have for the upcoming quarter. That is adjusted for through — most recent history through the miracle of the computer.

* * *

(p. 146) Q Now, you testified on direct that Tyler Pipe Industries of Texas, which, I believe, is the manufacturing part of the family, sells to Tyler Pipe Industries for reasons of some sort of federal regulations. There was a leading question, I believe, to that effect, or in any case that was your testimony.

Can you explain that? Do you have any personal knowledge of what those regulations are?

A I do not.

(p. 147) Q So you wouldn't even necessarily know whether it's SEC, or ICC, or what, would you?

Would you verbalize your answer.

A No, I do not.

Q I believe you also testified that Tyler does not send any employees into the State of Washington for the purpose of adapting, designing, or repairing any products.

Was that your testimony?

A That is my testimony.

Q It's also been indicated through the answers to interrogatories that have been produced that there was some repairing of products that did occur through local vendors in the State of Washington; is that correct?

A That's correct.

Q Would it be fair to say then that any repairing that was necessary—I should say any adapting, or repairing of your products that was necessary in the State of Washington, once they were in the State of Washington, would have been done by a local vendor?

A They—

Mr. McKinnon: I'll object to the form of that question. It calls for pure speculation. He can ask him if he has any knowledge during the audit period of products repaired in the State of Washington, (p. 148) and that's been answered.

Mr. Tuttle: Let me rephrase.

Q (By Mr. Tuttle) Do you have any knowledge of any products being sent into the State or Washington, and thereafter being repaired, or adapted, by anyone other than a Washington vendor?

A I have no knowledge.

Q So, to your knowledge, any repairing or adapting that was done would have been done in the State of Washington?

The Court: Well, counsel, he just said he doesn't know, so I'm not so sure we can press him to assume something just because he doesn't know.

Mr. Tuttle: Well, I'm—well, I just—okay. Let me make sure.

Q (By Mr. Tuttle) Would there have been any other vendor outside the State of Washington to whom you would have presented a product for repair or adaption once it was in the State of Washington?

A No.

Q Now, you indicated that you did not send any employees into the State of Washington, any service personnel; was that your testimony?

A That is our testimony, yes.

Q And I think "service personnel" was defined in general (p. 149) as employees who would follow up on a sale, whatever action may be required after the delivery; is that correct?

Let me rephrase.

What do you mean by "service personnel"?

A Well, it's difficult to answer the question, because since we do not employ people that could be called by a table of organization, or job description, as service personnel. Not for Washington, not for any other state.

Q When you say you didn't send any service personnel into the state, you mean you just didn't send them into the state?

A Don't have such personnel.

• • •

(p. 160) Q (By Mr. Tuttle) What activities did you expect your sales representatives to be engaging in on your behalf (p. 161) in Washington State during the audit period?

A I suppose to remain aware of the construction activity that was taking place in the market at the time, to try to the best of their ability to keep watch over the competition, if you please, and furthermore, then, to promote the sale and use of our products through the normal channels of distribution.

Q Specifically, then, what contacts were you expecting them to make?

In other words, what types of businesses were they expected to contact on your behalf?

A A broad brush, our people are all expected to call on recognized wholesale plumbing distributors, mechanical contractors, architectural engineers, as desired and/or required for a particular purpose, plumbing inspectors, plumbing code authorities, and so forth.

Q Now, I understand that they were—what would be the purpose of calling on the wholesalers, specifically?

A To remind them, I suppose, that Tyler Pipe, and themselves, were in the marketplace and actively soliciting business, in the normal course of business.

* * *

(p. 162) Q (By Mr. Tuttle) What did you require of your wholesalers—excuse me—required of your sales representatives as far as actions in calling on wholesalers?

A Once again, as I stated before, to remind the wholesaler that Tyler Pipe was still seeking their custom, if you please, and that they, themselves, also were there to be of benefit to the wholesaler at whatever point possible.

(p. 163) Q What did you do—require them to do as far as assisting wholesalers in formulating their orders?

Mr. McKinnon: Your Honor, that's been asked and answered. He already said promotional things.

The Court: Go ahead, answer the question. You can answer the question.

The Witness: There are no such requirements.

* * *

(p. 165) Q (By Mr. Tuttle) You indicated that the sales representatives would be expected, or required, to contact contractors; is that correct?

Mr. McKinnon: Objection. He's misstating the testimony. He didn't say that they were required to do anything.

The Court: Well, he can answer that question.

The Witness: In their normal business activities, we would expect that they would do so. The requirement does not exist.

Q (By Mr. Tuttle) And why, then, would they—would the sales representatives be contacting contractors?

A To have a feel of the sense of the marketplace. Whether it's a dead marketplace, or a viable marketplace, an alive and vigorous marketplace, which contractors have work upcoming, and which do not, and so forth and so on.

Q How would that information then be—would that information be conveyed back to Tyler then?

A Not necessarily, no.

Q Would it usually be conveyed back to Tyler?

A No.

Q What use would be made of that information by the sales (p. 166) representative?

A So that he's know—I'm having to assume his purpose here in some sense—so he would know where to best spend his personal time.

Q But I believe you indicated that that was an expectation of Tyler that he be doing that.

Why would Tyler care about that?

A Well, so we'll—

Mr. McKinnon: Just a moment. I object to the form of the question, the way it's phrased.

The Court: I'm very uneasy also about this whole line of inquiry.

Now, read back the question as it was asked. I'll ask the reporter to do that.

(Record read.)

The Court: That is managing his own time. You might rephrase your question. I'll allow the question.

Q (By Mr. Tuttle) Why would Tyler be expecting a sales representative to contact the contractors to find out about how active the market is, and so forth?

* * *

(p. 167) The Witness: Our considered judgment, I suppose, that this will lead to a maintenance or improvement in market share, perhaps. It also assures that the contractor may become more aware of Tyler Pipe and its products available, and its services.

Q (By Mr. Tuttle) I believe you also indicated the sales representatives are expected by Tyler to be contacting engineers; is that correct?

A As the occasion demands.

Q What would the purpose for those contacts be?

A Generally to be a specific nature, like a project or a particular product, or service, available to the engineer whose inquiry may come triggered by advertising in trade magazines, or whatever origin.

Q As far as you're concerned, are these contacts that you have identified, that are made by the sales representative, are they essential to Tyler Pipe's maintaining or even expanding its competitive position in the Washington market?

A Not totally.

(p. 168) Q They are not essential?

A Not totally essential.

Q What do you mean by "not totally"?

A Well, you can arrive at the marketing of your goods and services through all kinds of devices.

* * *

(p. 169) During the audit period, besides sales representatives, what other means did you have for contacting wholesalers, contractors, engineers, and the other people you have identified?

A Through the media described previously. Through catalog presentation, through the advertising, and, of course, by telephone, telegram, and telex.

Q If a customer had a—and by "customer" I'm referring to—I refer to wholesalers—

Is that essentially who your customer would be?

A That is the first-line customer, yes.

Q That is who you actually invoice?

A Invoice through, and ship to or through, yes.

Q If a Washington customer had a problem with the amount of the invoice, nonconforming goods, any kind of a problem arising out of a transaction, who generally would the customer contact?

A He would general contact our local representation, if available, but many of them would escape that onerous attempt to try to find that man, and call directly to Tyler Pipe through our 800 numbers to our local tele-
(p. 170) phone sales correspondent responsible for all sales in the State of Washington in the handling of the order itself.

Q Local sales correspondent?

A I'm talking about Tyler's headquarters. They know to call headquarters, and each department, for the matter which you just laid out.

Q Was there an 800 number during the audit period?

A I believe the deposition shows that part of that—part of the audit period. Otherwise they simply called collect. We accept collect calls from our customers, and always have.

* * *

(p. 176) Q (By Mr. Tuttle) Do those—how is it determined in a particular area whether to use a factory salesman or a sales representative?

Mr. McKinnon: Can I have a continuing objection to this line of questioning, Your Honor?

The Court: Surely. Mr. Tuttle, may I suggest that the question ought to be: Why did Tyler Pipe have sales people here who were independent contractors, rather than factory representatives, because that is what we're concerned with.

Q (By Mr. Tuttle) Why did you—why did Tyler have sales representatives in Washington during the audit period instead of factory salesmen?

A During the audit period Tyler had sales representatives because Tyler estimated, perhaps, that the market would not generate enough income to Tyler, and/or its sales representative, for Tyler to have a subsidized factory salesman rather than an established local representation, with other lines, offering income to that organization.

Q You say did not offer enough of an opportunity to justify a subsidized salesman?

A Yes, to justify a salesman being not subsidized for his total cost of doing business.

(p. 177) Q Is it true that the factory salesmen, that are utilized elsewhere, are paid on a commission also?

A In part.

Q A commission based on sales?

A Yes.

Q Is there any difference, in your opinion, as far as how the sales representatives go about making sales, as opposed to how the factory salesmen make sales?

Mr. McKinnon: I won't object to that, but I take it now as a concession that this man is established as an expert witness, and can render opinion testimony. As long as that is understood on redirect.

Mr. Tuttle: Your Honor, I don't understand that. I'm just asking how they go about their jobs. What the differences are.

The Court: Well, I'm not so sure it's that important that he qualify as an expert witness. Certainly he can testify about the considerations in his own company.

Go ahead. You can answer the question, if you recall it.

The Witness: Would you repeat the question, please.

Mr. Tuttle: What is the— Would you read the question back.

(p 178) (Record read.)

The Witness: I would consider there would be no difference.

Q (By Mr. Tuttle) Do both the sales representatives and the factory salesmen have the same restrictions on their authority to accept offers, that is—

That is the question.

A Yes.

Q If you have a problem—if Tyler has a problem with a slow paying customer, slow paying wholesaler, do you have— do you utilize local sales representatives to contact that customer?

A Sometimes.

Q Would that be the usual course, usual procedure?

The Court: In the State of Washington, during the audit period.

The Witness: Not necessarily, no.

Q (By Mr. Tuttle) What other means are used then—were used in the State of Washington during the audit period?

A Conjecture would say that direct contact is made with the customer by our Credit Department.

* * *

(p. 183) DIRECT EXAMINATION

By Mr. McKinnon:

Q Would you state your full name for the record, please, and spell your last name?

A My name is Dale Meador, M-e-a-d-o-r.

(p. 184) Q What is your residence address, Mr. Meador?

A I reside at 1400 Everglades, Tyler, Texas.

Q By whom are you employed?

A Tyler Pipe Industries, Incorporated.

Q In what capacity?

A Vice-president in charge of Utility Division sales.

Q Can you just briefly give your educational background?

A I graduated from Baylor University; major in history, minor in political science.

Q Can you briefly relate your history with Tyler Pipe; when you commenced working with them, and in what capacity, from the time you started working to the present?

A Employed in 1958 as a sales clerk, Utilities Division. 1963 I became sales manager for the Utilities Division. 1977 became vice-president of Utilities Division sales.

Q Can you briefly describe what the Utilities Division is, and the type of products that are involved with the Utilities Division?

A Utilities Division sells castiron water main fittings for underground water distribution systems, and a few other related products.

Q Where are those products manufactured?

A Tyler, Texas.

Q Do you purchase any product from any outside company?

A No. A few accessories, but not the product itself.

(p. 185) Q Can you briefly relate how the Utilities Division operated within the State of Washington during the audit period in this case?

How a typical sale would be made.

A The Utilities Division, during the audit period in the State of Washington, sold their products through what we in the trade call waterwork distributors, or waterworks wholesale houses.

Q Just briefly, please tell us what a waterworks distributor and a waterworks wholesale house is?

A A waterworks distributor buys and resells products used in the—what we call the waterworks industry, which would be underground water distribution systems mainly, or pumping stations, water treatment plants, or waste water treatment plants.

Q Briefly describe how a typical order would come in, with reference to a sale in the State of Washington during the audit period.

A During the audit period, from the State of Washington, the order would be via a telephone call from a customer itself.

Q What would happen with the order once it's received in Tyler?

A Inside sales people that receive that order, it would be edited, coded for the computer, shipping papers

generated. Those shipping papers would be sent down to our (p. 186) Shipping Department. Based on the schedule, within a few days probably those products would be loaded via a common carrier, and transported to the State of Washington.

After the order is shipped, we would invoice it, bill the customer, and the customer would remit payment directly to the company.

Q During the audit period, did you ever visit the State of Washington?

A Yes.

Q Do your remember the date?

A I believe January, 1976.

Q For what purpose was that visit?

A Oh, generally to call on our customers, and express our thanks for the business, and generally promote the goodwill of our customers.

Q Do you recall with whom you met on that visit?

A I would say we met with, and called on all of the waterworks distributors that buy our product. Five or six different wholesale houses.

Q Did you meet with anyone from Ashe & Jones on that visit?

A Yes, I'm sure we did.

Q Other than that one visit you just related, in 1976, during the audit period, did you ever have any other (p. 187) occasion to visit the State of Washington?

This is strictly with reference to the audit period.

A Within the audit period I visited the State of Washington only once. That was that 1976 visit.

Q Do you know if there were any—or if anyone else from the Utilities Division made any visit to the State of Washington during the audit period?

A Yes.

Q Who was that?

A Gentleman by the name of Eldon Meadows.

Q What was his position?

A His title at this time is national accounts manager. His responsibility is somewhat the same as mine. He's sort of an assistant to me.

Q During the—what was the purpose of his visit to the State of Washington during the audit period?

A I think it would have been the same as mine. Generally to promote the goodwill of our customers.

Q How does the Utilities Division dispense information to its customers with reference to the products it has to sell?

A Utilities Division operates with a catalogue. That catalogue contains pricing information as well as technical information. Each customer is assigned a catalogue. It's a perpetual catalogue, and as changes occur they (p. 188) are mailed directly to that catalogue holder.

Q Are any changes that—in the catalogue, are they sent to Ashe & Jones, or in turn distributed to the customer, or sent directly to the customers?

A Those changes are sent directly to the customer.

Q What information, if any, is provided by the Utilities Division to Ashe & Jones.

I'll change that to was provided to Ashe & Jones during the audit period.

A I don't think much information would have came from us to Ashe & Jones. I think it would be the reverse. Probably some information would have come from them to us. I'm talking about marketing information. I know of no specific information that we would convey to Ashe & Jones.

Q If you did convey—

The Court: Just a moment. Am I to understand that you have these sales people out there from Ashe & Jones, and they're trying to sell your product, and you do not communciate any information to them, that it's just a one-way street from them to you?

Is that really your testimony?

The Witness: I'm sorry, I was speaking in terms of market information, Your Honor. Market information to us, is on prices to the trade, local infor- (p. 189) mation that would be of interest to us. We might have something take place nationally that we would pick up reaction here in this area.

As far as the catalogue information, the technical information, the pricing information, yes, Ashe & Jones gets a catalogue just like a customer would. We keep them abreast of what we're doing.

The Court: You're using that term in a very technical kind of way?

The Witness: Maybe I misunderstood the question.

The Court: No, I don't think you did. I think I misunderstood.

The Witness: Going back to the catalogue information, any new type of information, if we have some information that goes out to the customer, yes, they would get a copy of that information.

The Court: All right. I see. Please go ahead, Mr. McKinnon.

Q (By Mr. McKinnon) What type of information would Ashe & Jones provide the Utilities Division, or did provide the Utilities Division, during the audit period?

A Ashe & Jones would provide the Utilities Division with what we would call general market information.

Q Can you just briefly describe what type of information (p. 190) that is?

A Pricing in the—I'm talking about user prices, competitive factors that enter into the overall marketing situation, such as maybe some competitor come out with a new product. He would convey that to us. Maybe our customer's competitor's selling it at prices lower than he is. And possibly something has happened in the marketplace with regard to pricing, and they would convey that to us.

Q Was Ashe & Jones the exclusive purveyor of this type of information during the audit period, or did you get it from any other sources?

A No, we would get the same information from our customers.

Q How would you receive this information from your customers?

A Through the telephone, more than likely. Also maybe trade shows, and other areas where we would have communication with our customers outside the State of Washington.

Q Can you briefly describe what type of trade show you're referring to?

A Annually would be a national waterworks convention. It is a convention sponsored by the American Waterworks Association. There might be some, oh, smaller trade shows. Well, Waste Water and Water Equipment Associa- (p. 191) tion would sponsor a trade show of some sort. There has been some in years past where customers in this area would be at that show, and we have communication with them there.

Q What type of booth, or what would you provide at those trade shows?

A We would have a 20 foot booth, or ten foot booth, showing our products, showing anything new we might have, or generally a place to sit and discuss business.

Q During the audit period, would the—how would the Utilities Division receive an order?

Directing the question to whether you would get an order from the customer directly, or through Ashe & Jones.

Q Utilities Division receives their orders from waterworks distributors directly from that customer, or ditributor.

Q Is that true in most cases?

A Yes. In almost all cases, I would say.

(Plaintiff's Exhibit No. 49 was marked for identification.)

Q (By Mr. McKinnon) Handing you what has been marked for identification as Plaintiff's Exhibit No. 49, can you please tell the Court what that is?

A This is headed, "Tyler Pipe Industries, Inc., Number of Invoices Issued by Division." And then we have a number (p. 192) of orders transmitted by the sales representative broken down into two different categories. Those orders are transmitted by the sales representative, and those orders come directly from customers. It's laid out through the audit period of 1976 through the first nine months of 1980. It's broken down from Soil, or DWV Division, Utilities Division, and the Plastic Division. There is a total number there. And then they add the Wade Division, and then another total.

Q Was this document prepared since we were in court here this past week?

A Correct.

Q By whom was it prepared?

A It was prepared by our Accounting Division, based on my instructions.

Q Was it prepared in the general course of business of the Accounting Division based on the records that they have?

A Yes.

Mr. McKinnon: At this time I'll offer 49.

The Court: Any objection, Mr. Tuttle?

Mr. Tuttle: May I ask a couple questions?

The Court: Please go ahead.

Mr. Tuttle: You say this was prepared by the Accounting Division under your instructions.

(p. 193) Was that your testimony?

The Witness: Correct.

Mr. Tuttle: And it refers to the number of invoices issued. So that is the — that is an approximation then.

Is it the same as a sale in the State of Washington?

The Witness: Yes. An order would be received, and shipment made, then an invoice issued. So there has to be an order before you have an invoice. So the number of invoices, total invoices, would correspond exactly with the total number of orders received.

Mr. Tuttle: No further questions.

The Court: Any objection?

Mr. Tuttle: No.

The Court: What has been marked for identification as the Plaintiff's Exhibit 49 will be admitted into evidence.

(Plaintiff's Exhibit No. 49 was received in evidence.)

Q (By Mr. McKinnon) Calling your attention to Exhibit 49, just briefly tell us what that shows as to the Utilities Division, compare the sales received directly, or the sales that came through the sales rep Ashe & Jones?

The Court: Before you answer that, do (p. 194) you, Mr. McKinnon, have another copy of that document?

Mr. McKinnon: I just had two copies made. I'll get a copy made at the recess.

The Court: All right. You may have to be a little more detailed in your questions so I can follow, or maybe we can share. I think we can share this.

Mr. McKinnon: Can I have the last question, or do you remember the question, Mr. Meador?

The Witness: No. Would you mind repeating the question.

The Court: We'll have the court reporter read it back.

(Record read.)

The Witness: The exhibit shows the total number of orders received by the Utilities Division. Then it breaks down those number of orders as received directly from customers, and the number received from sales representatives. And it shows that we received none from sales representatives, and all came directly from customers.

Mr. McKinnon: That is all I have with reference to that exhibit.

The Court: All right. I'm having just a little trouble here. The reason was I couldn't read (p. 195) what was the heading there. All right.

Q (By Mr. McKinnon) Does the Utilities Division exercise any supervisory functions, or control, over Ashe & Jones and the manner in which Ashe & Jones operates its business?

A No.

Q Is the information received from Ashe & Jones necessary in order to enable the Utilities Division to make sales within the State of Washington?

A No.

Q Why is that?

A Because we have received a lot of information directly from our customers. Within the audit period we would have received this type of information from sales representatives. We would have dropped those sales representatives and changed to strictly house account. And that is — by that I mean we have no representation at all in an area within the audit period, and our market penetration was not affected seriously.

In fact one area — several areas — I think we probably increased our market penetration without any representation.

Q During the audit period, where did that occur?

A During the audit period Northern California would be a good example. I'd say the upper half of California, (p. 196) which would include the entire bay area, San Francisco and the surrounding areas.

Q Would the information that you received from California during the audit period, did that have any effect on the market in the State of Washington?

A Yes.

Q How—what type of effect?

A Our manufacturing competitor probably — our manufacturing competitor would sell — did sell at certain prices within the Northern California area, and those prices determined sales prices in the Washington area for some reason or another. It's a matter of the way you approach the market. It's a national market, as far as our competitors are concerned, and it's a national market so far as we're concerned.

Q Did you have a sales rep in Northern California during the audit period similar to Ashe & Jones?

A Yes. From 1976 — all of 1976, all of 1977. We had no representation in 1978, '79, and the first nine months of 1980.

Q Were you able to maintain your market in Northern California without the sales rep?

A Yes, we maintained our market, and actually we feel our market penetration in that area —

Q Were there any other areas in the United States during (p. 197) the audit period where you had no sales rep?

A Oh, yes. New England, New York, New Jersey, all along the Atlantic Seaboard, Michigan, parts of Ohio, parts of — I'm sorry — parts of Nevada. And, as I said — you said, "any other." I was going to include Northern California, but you did say any other areas.

In the Southeast, which would be Florida, Georgia, Alabama, the Carolinas for a portion of that time. I can't quote you exactly when.

Q Were you able to make sales in these areas without representation during the audit period?

A Yes.

Q And were they — do you have any idea of the volume of sales, say in a particular area, the New York area?

A If I understand the question, in the New York area 100 percent of the sales is without representation.

Q My question was geared to: Would this involve a substantial amount of sales?

Do you have a large market in that area?

A Oh, yes. Of the total Utilities Division sales of the entire country, I would say probably 30 to 40 percent at that time were house account sales, and that is with no sales representation.

Q How would you communicate with these people?

A We communicate directly by telephone, and the mails, of (p. 198) course. But primarily the telephone.

Q Were these the same type of customers as you had in the State of Washington during the audit period?

A Yes. These customers are what we call the waterworks distributors, or wholesale houses.

Q These waterworks distributors, and wholesalers, do they in turn make sales of the products you sell them?

A Yes, they buy our product and pass through it and sell it to the trade in that area. They also buy other waterworks related products. They distribute a complete line of product to do a given job.

For instance, they'll sell to the use, which would be maybe your local waterworks utility pipe, valves, fittings, all type of product that it take to do a complete underground waterworks system. We would only have the pipe. He provides the total package. We're only a part of that package.

It's what we mean when we say "distributor." He buys and distributes product for the waterworks industry.

Q During the audit period did you need to rely on the information provided by Ashe & Jones, or the services provided by Ashe & Jones, in order to make a sale in the State of Washington?

A We received some information from Ashe & Jones, I'm sure, but we could have done without that information. If (p. 199) that's your question, yes, we could have done without the information from Ashe & Jones.

Mr. McKinnon: That is all I have.

The Court: Well, Mr. Meador, let me be sure I understand this.

Do the other divisions of Tyler Pipe need the services of Ashe & Jones, but your particular division does not?

Is your division different from the other divisions?

The Witness: Your Honor, we pursue what we call a waterworks industry, and that is a little bit different from what previous testimony has shown you here. I'm talking about the DWV, or the Soil Pipe Division. They pursue what we call the drain, waste and vent market.

The Court: Yes.

The Witness: It's generally a different set of contractors that do the work and make the installations. It's generally a different set of wholesale houses that buy and resell, or distribute the materials. It's generally under the authority of different people.

For instance, in your city you probably have what we would call a Water Department, which would employ a water superintendent. Under his jurisdiction he would be responsible for delivering clean potable water to (p. 200) your home. He would see that there is a water main installed in the street in front of your house. He would see that that water is by either the city's own facilities, installation facilities, or through a contractor, that you get a meter put in front of your house. He would bring that water and the meter up to the property line.

From there I would say is the division between the waterworks industry and the plumbing industry. From there it would be up to you to hire you a plumber to bring the water on into your house. It would also be up to you to provide your water facilities for your house, which would again tie into the street, and into your local, in many cases, water interceptor.

The waterworks is going to provide you your clean water, and provide — take care of your waste water. By the same token, it comes into your property, back out to the street, or the collection system. That is normally up to you, and normally the plumbing industry brings you the materials it takes to put a water and plumbing system into your home.

In that respect the waterwork industry and the plumbing industry is completely different. The contractors who do the work are different.

The Court: I understand the difference (p. 201) in the products, and functions of those products, but what I'm wondering about is the sale of the products, and why do you consider your division different from the other divisions as far as your sales needs are concerned.

Why is it that you can do without Ashe & Jones, for instance, but the other divisions can't, or are you different in any way?

The Witness: As I have tried to explain to you, we're different in that we're pursuing a little bit different trade, a little bit different industry. Different people do the selling. Different people do the installation. They control what is in your area. The city water department, and what you get in the street, and how that water gets up to the property line.

Your plumbing code tells us what kind of products your going to use, and the installation procedure you're going to use.

The Court: I understand that. But why is it different to sell the products in the Utilities Division as opposed to the Wade Division products?

Why is it different? Why is the selling process different?

The Witness: Your Honor, I don't have sufficient information to speak for Wade. I'm sorry. (p. 202) I haven't been involved in Wade. I'm really not too familiar with Wade sales, or how they pursue their particular market. But the Utilities Division, as I said to you, our experience over the years has been that we probably, through the years, have had more representation than we do now, as we have changed representation in areas.

Maybe we used a representative to represent the DWV line, but we did not in waterworks. So we have less and less representation all the time in the Utilities Division. It's a matter that we did not feel that we needed that representation in the areas, and our experience has shown that we do not.

I believe you asked the question: Is this true of the other divisions also. As I say about Wade, I cannot — I cannot speak for Wade with enough information, but in the DWV Division I'd say it was very possible we could operate in an area without any representation in a given area.

The State of Washington, I think, is a good example. Many of the wholesale houses that pursue the plumbing industry, the DWV people, those are branches of national organizations wherein sales policies are set elsewhere, and the fact you had that sales rep calling on that particular branch within that given area would not (p. 203) have much to do with whether or not the sale was made. Many of the sales are made at the national level, and that is just the way things work out.

The Court: Yes, I can see that. That would be a difference all right. Let me ask you, Mr. McKinnon, do you have any questions that you would like to follow up on then before Mr. Tuttle begins to examine.

Mr. McKinnon: Well, I just have one question.

Q (By Mr. McKinnon) Are most of your contacts with the wholesalers with whom you deal made on a national, regional, or state level?

A I'd have to say in most cases they are on a national level.

Q Why is that, if you can just explain why they would be on a national rather than any other level?

The Court: Well, I can see that the contractors might very well not be local contractors, that they would be bigger projects, and perhaps the contractors would be employed more on a national basis. I can see that.

The Witness: May I comment on that?

The Court: Please go ahead.

The Witness: Why you're saying is very true. You may build a water treatment plant, and your (p. 204) contractor may be from New Jersey.

The Court: Right.

The Witness: The sale of the products that go into that water treatment plant may be made in New Jersey. They may be manufactured in Alabama. And what goes on as far as sales within the State of Washington would have nothing to do with it.

A good example is some of the problems down in the State of Mississippi. They have been having some jobs nowadays that are of such magnitude that they have no contractor large enough to make bond to do those jobs, and the contractors come from out of state, and this causes quite a bit of controversy in the state. The state would like their own contractors to do the work but the job is that large, or the contractor too small they can't do the job.

You're statement is very accurate.

The Court: Anything further?

Mr. McKinnon: Nothing further, Your Honor.

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(p. 208) CROSS EXAMINATION

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Q (By Mr. Tuttle) Just to make sure I understand your testimony, Mr. Meador, your testimony would be then that those customers that you identified, Pacific Waterworks, Grinnel, H. D. Fowler, Consolidated Supply, Waterworks Supply, and Crane Supply, would have been customers of only the Waterworks Division during the audit period, and not customers of other Tyler Pipe divisions; is that correct?

A That's correct. We say they are not customers of the other divisions of our company. I would say that by that they are not pursuing the plumbing trade, for instance, or the DWV trade.

Let me turn that around. Well, that would be correct. The waterworks distributor is going here to this particular market, and the DWV distributor's going to his market. And usually there is not much interchange. They might want to buy one stock of pipe, and I'm sure the other divisions would sell them, but, no, they are not customers of the other divisions.

• • •

(p. 224) Q. Okay. Who were your competitors as far as waterworks sales in Washington; competing manufacturers?

A I'm not sure that I know the total picture, but I think you would say goods are sold by Pacific States Castiron Pipe.

Q Excuse me.

A Pacific States Castiron Pipe, Trinity Iron and Steel Company.

Q Excuse me.

A Trinity. U. S. Pipe and Foundry Company.

Q U. S. —

A U. S. Initials "U. S." Possibly American Castiron Pipe Company.

Q Excuse me. What was that one more time?

A American Castiron Pipe Company. We have a local pro- (p. 225) ducer. I assume he's still producing. Olympic Foundry Company. We have a small foundry in the Los Angeles area called Dayton Foundry Company. We have a specialty waterworks producer, who produces related lines, in Portland, formerly known as Industrial Iron Works. I believe now they operate under the name of Western Foundry Company, in Portland, or the Portland area. And we have some import competition. I think generally that would be the size of it.

Q Do you know whether or not those competitors have sales representatives in the State of Washington?

Mr. McKinnon: I'll object on the ground of relevance. What relevance does that have to the issues at stake here, how they operate?

The Court: Mr. Tuttle.

Mr. Tuttle: Mr. Meador has testified on direct, if I understand his testimony, that it's not really necessary to their sales to have local representatives, that these sales sort of happen magically, and I think it goes very much to the credibility of that testimony whether or not there are competing manufacturers who have representatives.

The Court: Objection overruled. Go ahead, answer the question.

Mr. McKinnon: I'd like one portion of (p. 226) that statement stricken, Your Honor. I think it's a grossly improper categorization when he put in the phrase, "as if they happen magically."

The Court: Overruled. Go ahead.

The Witness: Trinity Valley Iron and Steel does not.

Q (By Mr. Tuttle) Does not have a sales representative?

A Correct. We would consider him our prime competitor in this area. The import people, I'm sure, do not. The local manufacturer, I can't tell you. Dayton Foundry Company does not.

Q Excuse me. Olympic — you're referring to Olympic when you said "the local," right?

A I said I do not know whether he does or not.

Q And Dayton, you said what?

A Dayton Foundry Company does not. And to be frank with you, I don't know about the others. I don't

know of the others having any, but I do not know that they do not.

Q But of these that you have mentioned, you're sure about those; is that correct?

A I'm sure that Trinity Valley does not have a local sales rep. I'm sure that Dayton does not. I'm sure the importers do not. Yes, the ones I have testified to, I'm sure they do not have a local sales representative.

(p. 227) Q Now, when you say they do not have any local representatives, would that include any salesmen employed by the company, as well as independent representatives?

A I'm sure they have sales people who operate in their own producing area. Whether or not those sales people came into this area, I couldn't tell you, if that's your question.

Q But you indicated that you knew about Trinity Valley, and Dayton, and the imports.

Does that mean that they — those that you know about, they did not have factory employed salesmen in Washington?

A My testimony is that — residing in the State of Washington, no. I believe your question is operating in the State of Washington. And if that meant outside sales people coming into the state, I had no knowledge of that.

* * *

(p. 237) Q Is it your preatice to seek information from your local representatives before you add a new distributor?

A Yes. If he has information that we might use, I think we would seek that information. I mean, if we felt he had information we could use, yes. There would be occassions where I think in the case of Hines, or comparable to the case of Hines, wherein the information would come elsewhere—come from elsewhere, and the information wouldn't really apply to the area until a later stage, until we pretty much decided what we wanted to do.

I don't think we really consulted Ashe & Jones in the Hines case too much, is what I'm trying to say.

Q Now, you were in Washington in May of '76; is that correct?

A I'm sorry. I can't recall. It was either January or May. I think we have testimony in the deposition which would indicate when we were here.

(p. 238) Q Was one purpose of that trip to look into adding Hines at that time?

A No, I don't think so. At the time I'm sure it was probably just incidental. At the time the Crane Company had a waterworks division in Seattle which they sold, and it would have been a branch of Crane that they sold to the Hines Company, and that occurred in 1976.

But I don't think the purpose of the trip was to discuss whether or not we would sell Hines. I don't believe we gave it any serious consideration at all at the time. The Crane Company branch was not all that important to us.

Q I'd like to call your attention to the—your deposition at Pages 94 and 95, with reference to apparently the May of '76 trip, when you were asked:

"Do you recall any of the subjects that you discussed with John Ashe on that trip?

A I'm sure we discussed the—"

Then Mr. McKinnon interrupted, and he said: "He's asking if you recall what you discussed." And your answer:

"Yes, I recall that we discussed the general market condition; and we discussed the sale of the other customer's waterworks business. And I'm sure we discussed whether or not we (p. 239) would want to sell Hinds Supply Company."

Would that accord with your recollection now?

A Yes, it was, I'm sure, mentioned that the Crane Company was selling out, and they were selling to Hinds Supply Company, but I don't think at all it was the main purpose of our trip. But I'm sure we weren't seriously considering selling Hinds Supply Company.

Q But you did discuss it with the representative at that time, right?

A Probably. My recollection is a little bit shy on 1976.

• • •

(p. 242) Q Again calling your attention to your deposition, the question was asked—

Mr. McKinnon: What page?

Mr. Tuttle: Page 27. Actually let's begin on Page 26 and 27.

"Q What other differences, if any, are there as far as, for example, between the factory salesman and the manufacturer's representatives and how they solicit or take orders?

A I don't quite understand what you mean. In the State of Washington we would not give our independent agent as much support as we give a direct factory man in San Antonio. Distances have something to do with it.

Q In what sense do you mean support? What does that mean?

A Assistance from the office with other sales people to help them. We would look at expense involved, what does (p. 243) it take to support the guy and so forth. But your question originally, I assume, was is there any difference in the way they call on the trade, the way they solicit business.

Q Yes.

A They themselves, sole and alone, I would say very little difference. Each would walk into the customer's place and promote the sale of our products."

Would that be your testimony today as well, as far as the difference in how they call on the trade, and so forth?

A Yes, that would be my testimony.

Q That as far as they act alone, very little difference?

A Yes. I would say when they walk in sole and alone, they promote the goodwill of our customers, and thank them for the business, and see if they can't secure additional business, keep the door open for further transactions.

* * *

(p. 250) Q How does the sales representative go about keeping track of the competition?

A The waterworks distributor has a competitor who is another waterworks distributor. They each bid jobs.

They bid a total package, which would include pipe, valves, fittings, brass, all the products that—all the products required to do an underground water distribution system.

They would put together whatever they want for their particular products, and they bid on a contract to a municipality, or to a private water company, assuming the most responsible low bidder would receive the order.

If the fittings in the bid are broken out, and the competitor can see some way—maybe through a bid to a city, or maybe even a public open bid, if the distributor (p. 251) can see that the prices bid by his competitor were low enough in fact that he thought his competitor was getting a better price from my manufacturing competitor, that information would probably be conveyed to us through the telephone, or to us through our sales representative.

That is what we mean by general market conditions and pricing information.

Q Did you ever have occasions where the sales representative is called upon to handle some sort of an adjustment in a customer's account?

That is, goods arrived, they are non-conforming, of there's a question about the invoice, or something like that.

Does the sales representative become involved in those kinds of matters?

A Oh, we might ship a truck load of material, there would be one item short, and nobody would question the customer, maybe without so noting the shortage on a so-called overage and shortage bill, at the time of delivery. Maybe nobody counted, or miscounted, or something. They might relay to our sales representative they were short one

of this, or one of those. He would relay that information back to us.

Yes, he would be involved like that. Other than that, I don't know of any other situation where he would (p. 252) be involved.

Q So you're saying that is the kind of problem that would arise, that you just described; is that it?

A Well, I think anything which he might be involved in, there may be a more serious problem. Even the shortage itself might not be related to the sales representative. It may be related directly to us through the telephone.

Q Is the sales representative ever involved in investigating a slow pay account, where the customer is not timely paying for the materials?

A I don't recall any sales representative ever handling any problem of this nature for the Utility Division. It may be for other divisions, but I have no knowledge of that. No, I don't think so.

Q You're saying anywhere, or in the State of Washington?

A Well, I'm saying I know definitely that they have never been involved in anything like that for the Utilities Division for the State of Washington, and I'm talking about any sales representative, independent sales representative, has never handled anything like that for the Utilities Division anywhere in the country. Possibly a factory salesman has, but not an independent sales rep.

* * *

(p. 257) Q I believe you testified that you don't maintain any (p. 258) supervisory control over Ashe & Jones; was that your testimony?

A Correct.

Q I don't know what you mean by "supervisory control," but let me ask you this:

Has there ever been an instance where you asked Ashe & Jones to do something and they didn't do it?

A No, I don't recall an instance.

Q So it would be—would it be fair to say that they are usually cooperative and go along with your requests?

A If we had such a request, I think that they would, and I think you could say that they would be cooperative should those occasions arise.

* * *

(p. 263) REDIRECT EXAMINATION

By Mr. McKinnon:

Q Mr. Meador, you testified that you did talk to Mr. Jones (p. 264) during the audit period. Did you discuss anything other than sales in the State of Washington?

A Yes.

Q Can you give us an example. Did you discuss sales in any other areas, or states?

A Yes, we discussed conditions in Montana. We also have a situation wherein we would discuss general market conditions in British Columbia. I would discuss conditions with Ashe & Jones, general market conditions, in Alaska. And also Alberta. He had Edmonton and Calgary.

Q Were you attempting to get into the Canadian market?

A Yes, at that time we were trying seriously to break into the Canadian market. And Mr. Jones and I travelled in Canada several times, and we worked at that quite a bit.

Q You testified that you currently do not have any rep in the State of Oregon. That is just the Utilities Division?

A That is correct.

Q Does the DWR have a rep there now?

A They do.

Q You recall any instance during the audit period when Ashe & Jones rendered any assistance with respect to any complaint made during—concerning a sale of a Utilities Division product?

A No, no complaints, No, I know of no instance.

(p. 265) Q During the audit period, do you recall any instance where Ashe & Jones rendered any assistance, or asked to intervene concerning collection of any particular account?

A No, there were none.

* * *

RECROSS EXAMINATION

* * *

Q You just testified that there was no instance during the audit period of Ashe & Jones assisting with regard to any complaints, handling of complaints; is that correct?

A That's correct. The waterworks distributor, or wholesaler, were pretty much if he had any complaints would handle those himself.

Q What do you mean by "handle them himself"?

A Well, he sells the trade, and he services the trade. We have nothing to do with that.

Q But if it's a defective product—

A I know of no instance where we have had a defective product. We may have had a broken fitting, it probably been broken at the time it arrived, would never get out to the trade.

Q Who would handle that then?

(p. 266) A Well, the customer, in all likelihood, would call the office and say we received two broken fittins in the shipment last month, you owe me, and we would replace the fitting, or give him credit for the fitting, or the same information he might relay to Ashe & Jones, and they in turn would relay it to us.

Q So with regard to the audit period, is it your testimony you wouldn't necessarily know about a particular complaint?

A No, that is not my testimony.

Q You indicated that there weren't any handled by Ashe & Jones during the audit period, and then you indicated it could have been handled by Ashe & Jones.

A Let me put it this way: There were no serious complaints, no defective product complaints, that occurred during the audit period. And would I have known about any serious complaints, yes, I would have. So my testimony is that there were none.

* * *

REDIRECT EXAMINATION

* * *

Q The inventory you testified to belonging to the waterworks distributors, that is for products after they had been sold by Tyler Pipe?

(p. 267) A I believe the testimony—I believe the question was: Does the waterworks distributor maintain an inventory, and the answer was yes, he does maintain an inventory.

Q But that is his inventory?

A It's his inventory. He buys and pays for it.

Mr. McKinnon: That is all I have.

The Court: I have one question, and it may not be appropriate to you now, but somewhere along the line I would like to have it answered, and that is whether or not the sales of Tyler Pipe products, Utility Division, to the warehousemen, and distributors here in the State of Washington, is taxed in the State of Texas.

The Witness: The Utilities Division products have taxes applied to them.

The Court: I'm just wondering what kind of taxes. If the sales are taxed, not ad valorem taxes, but whether the sales are taxed in the State of Texas.

The Witness: We pay a tax on inventories. We pay a tax on our production machinery. To that degree, yes, utility products are taxed in the State of Texas. We have, of course, our state, county. In addition, we have our school taxes, and we also have a junior college district that we pay considerable taxes to.

* * *

(p. 268) DIRECT EXAMINATION

By Mr. McKinnon:

Q State your full name for the record, please, and spell your last name.

A Glenn Jones, J-o-n-e-s.

Q And your residence address?

A 3421 East St. Andrews Way, Seattle, Washington.

Q What is your occupation, Mr. Jones?

(p. 269) A I'm a manufacturer's representative.

Q Do you have a company?

A Yes, Ashe & Jones, Incorporated.

Q Is that a Washington corporation?

A Yes.

Q You hold an office in Ashe & Jones?

A Yes, I'm a director and president of the company.

Q Where does Ashe & Jones maintain its office?

A 971 Thomas Street, Seattle.

Q Can you briefly just tell us what you mean by a manufacturer's rep?

A Well, the name is more or less what it implies. We represent manufacturers in the plumbing and allied fields.

Q You represent manufacturers other than Tyler Pipe?

A Yes, we do.

Q But it would be fair to say that you do not represent other manufacturers on directly competing products?

A No, that would not be—you cannot do that in our type of business. They would be products in the plumbing industry, i.e. sinks, toilet seats, that sort of things.

Q Can you just briefly give us a history of Ashe & Jones, how long it's been in the business?

A Well, it's been in business actually through a predecessor company, James A. Reardon Company, which my father was (p. 270) a principal in, and later it was changed in the late '40's to Earl H. Jones, which was my father's name. Then in about '56 or '57, it was changed to Ashe & Jones. But it has a history going back to about 1926, or somewhere in there.

Q Okay. When did the corporation, or its predecessor corporation, commence to represent Tyler Pipe?

A I was in the service at the time, but I think it was about '44, '45. In that time frame.

Q Which divisions of Tyler Pipe do you represent?

A We represent the Utilities and the DWV.

Q Now, there's been testimony that you provide Tyler Pipe with market information.

Can you just briefly relate the process you go through in providing them with that type of information?

A Well, we're calling on ongoing jobbers, and through our contacts over the many years we're familiar with most of the principals in the business. And if there is a market condition, a competitive condition, we would be informed and so inform the foundry.

Q Do you represent Tyler Pipe in areas other than just the State of Washington?

A Yes, we do.

Q Can you briefly tell us what the other areas are?

A We have northern Idaho above Lewiston, the State of (p. 271) Montana. the three western provinces of Canada; Saskatchewan, Alberta, and British Columbia, and the State of Alaska.

Q Do you take any orders on behalf of Tyler Pipe for either of the two divisions that you represent?

A Yes, we receive orders.

Q What do you do with the orders when you receive them?

A In the normal course of business, we would, and today, we usually phone them to the respective division of Tyler.

Q Do you recall, during the audit period—and you understand what the audit period is in this case—have any instance where you took any action with respect to any complaints on any sales of Tyler products?

A In that time frame, I can't recall of any specific instance, no.

Q Have you—does it ever happen that you might do something like this?

A Yes, I think maybe it happened, but it's so infrequent that we have a quality product, and I stretch myself to really think about it in the time frame.

Q During the audit period, you recall any instance where you took any action in order to assist Tyler Pipe in collecting a delinquent account?

A No, I do not.

(p. 272) Q Do you maintain any inventory for Tyler Pipe in the State of Washington?

A None whatsoever.

Q Do you conduct any advertising for Tyler Pipe in the State of Washington?

A No.

Q Now, there are certain instances where sales are called in directly to Tyler at its offices in the State of Texas.

A That's correct.

Q Do you receive a commission on those sales?

A Oh, yes.

Q Do you receive a commission on any sale to a customer in the State of Washington?

A We're the sole representative of those two divisions in the state.

Q What type of information does Tyler Pipe provide you?

A Well, basically with the catalog information, and the discount structure to go with the catalog information.

Q Okay. Anything else that you can think of?

A Well, if there's a new product, we would get brochures, or a bulletin that would be sent to the jobbers and ourselves regarding a new item.

Q Do you recall, during the audit period, receiving any such information with respect to a new item?

(p. 273) A Not in that period, no, sir.

Q Did you ever receive any payment for any of the products that were sold by Tyler Pipe?

When I say "you," does Ashe & Jones receive payment?

A Oh, pardon me. You mean do they pay us?

Q Yes.

A No, sir. It would all go directly to—well, I think on their invoice they have bot a box, I believe, in Dallas, or Tyler. I'm not familiar with that. But it would never come through our hands.

Q Do you pay Washington B & O taxes on the commission that you receive from Tyler Pipe?

A I certainly do.

* * *

CROSS EXAMINATION

* * *

Q With regard to that last point, you pay B & O on commissions that you receive; was that your testimony?

A That is correct.

Q So you don't pay on the gross amount of the sale, just on the commission that you receive?

A There would be no way we could—we're not required to report that way. It would be very hard to report that (p. 274) way anyhow. We report commission from all individuals, the way the tax laws read for the state, I believe.

* * *

(p. 279) CROSS EXAMINATION

* * *

Q Do you ever give him—okay. How about Mr. Meador; why would you be talking to him?

(p. 280) A It would be market conditions in the Utilities Division. And it might—might have to do with areas other than the State of Washington. We have had numerous conversations about Canada, as testified, and other areas. We have discussed Oregon. We have discussed Alaska, at times, market conditions.

Q And Mr. Horan, what would you be calling him about?

A That relationship goes back a long ways. Sometimes it's information, gossip, things going on, people moving around, customers selling out to conglomerates. He's in charge of the exports. I do refer to him on Canadian business. That is his department. He's the export end of the DWV.

Q Oh, in addition to the other divisions, he oversees export sales; is that what you're saying?

A That is correct.

Q And why would you be talking to Mr. Gerhardstein?

A In regards to Soil Pipe market conditions in the United States.

Q Would you ever be talking to Horan, Meador, Gerhardstein, or VanDerbeck, about specific orders; would you have been?

A In the time frame of the audit period, I can't think of ever talking to them about a specific order, no.

Q So it would have been primarily market information; is (p. 281) that correct?

A Right.

* * *

Q You have testified that you were a representative for other companies besides Tyler Pipe; correct?

A That is correct.

Q How many such companies, can you say?

(p. 282) A Offhand, about five, six other manufacturers.

Q And they would have been in non—they would have carried products that were not competitive with Tyler's then; is that right?

A That is correct.

Q Do you—when an order is filled, do you receive a copy of the invoice?

A Yes.

The Court: Was that true even though the order was placed directly by the customer to Tyler Pipe?

The Witness: Yes. We would always receive a copy of every invoice coming in the state.

* * *

(p. 283) Q Okay. Let me rephrase. Start with the Soil Pipe Division.

Did you provide them with information about what the market prices were with soil pipe products?

A Yes.

Q And would they then use that information in establishing their prices for Washington?

A In conjunction with other information, yes.

Q How about the Utilities side, would you provide them with market price information there, too?

A Yes. But in that situation there are less competitors in that field, and it isn't as volatile as, say, the soil pipe sales.

Q So you're saying that changes in prices were less frequent?

A Yes.

Q But ultimately, in all cases, Tyler Pipe set the prices that it would charge to its customers; is that correct?

A That is correct.

* * *

(p. 285) Q How many employees does Ashe & Jones have?

A Counting myself, we have four full time and one part time.

Q And how many of those are sales people then?

A Three and a half.

Q By "sales people" then, are these three and a half people going out and calling on customers; is that correct?

A That is correct.

* * *

(p. 287) Q What do you do on Tyler Pipe's behalf? Can you characterize generally what activities you engage in in the Washington market?

A Well, No. 1, as I said before, we keep them abreast of market conditions. If a new product was to come out, we would try to get to the specifying architects, or engineers—mechanical engineers.

Q Would you explain that, if a new product were to come out?

A We would try to get to the people that specify the use of that material for buildings, i.e. like this courthouse, or Columbia Center, or whatever it is, to make sure this product was at least approved or in their specifications. We might call on contractors to promote the use of our material on a specific job and/or jobs.

Q So when you say, get to the engineers to get them to specify, that would be to specify soil pipe—Tyler soil pipe products?

A Yes. Or if there was a new item in the utilities, it was a specification item, we would do the same with that, (p. 288) of course.

* * *

Q How much of your time would you say is devoted to contacts like that with engineers and architects?

A It varies. Maybe 20 percent, 25 percent.

Q Could it be a third?

A Could be, at times. That is just a guestimate. It's (p. 289) very hard.

* * *

Q Okay. So for what purpose would you be calling on contractors then again?

A To get them to use our product.

Q Do you have well-established relations with most of the architects and engineers in the trade—in the business?

A I would say yes. I have been in it all my adult life.

Q Would the same also be good relations with contractors in the field then as well?

(p. 290) A Yes.

* * *

(p. 292) Q Do you solicit orders from wholesalers?

(p. 293) A Yes.

* * *

(p. 297) Q You indicated about once a year. The question was:

"How often would you say that has happened?

A Infrequently. Maybe once a year."

A What I think, Mr. Tuttle, I might have been referring to, is an invoice that was not paid. Usually it's an oversight often in a chain outfit, where they overlook an invoice. It isn't slow pay, per se. It might be a specific invoice that somehow was not paid, and we might help them clarify that.

Q So you would be involved in that situation?

A Rarely, yes.

* * *

(p. 298) Q I don't mean to use "investigation" in a technical sense, just looking into a competing product in the market.

A Are you saying look into a competitor's activities? Is that what you're referring to?

Q Yes.

A We wouldn't be asked, but we would do it on our own.

* * *

(p. 302) Q Now, if a customer had a complaint about a Tyler Pipe product, would it contact you ordinarily?

A Either way. Could contact us, or could contact the (p. 303) foundry.

Q Would one course be more common than the other, was it, during the audit period?

A We don't have that many problems. I couldn't say. What would be the problem, quality?

Q Non-conforming product, not enough shipped. Any kind of problem.

A In thirty years I could name on one hand.

Q In thirty years there have been less than five times?

A Quality problems, yes.

Q How about insufficient quantity shipped?

A They might contact us. They might contact the factory. I thought you were talking about quality problems. You're talking—

Q I'm talking either one.

A Oh, that does happen. Human beings ship things, and a lot of times they would contact us about that, certainly.

Q So as far as an insufficient quantity being shipped, would it be more common that they would contact you, the customers contact you?

A In the Soil Division, I'd say yes. In the Utilities, either way.

Q How often does that—did that happen during the audit period, would you say, that there was either a non-conforming product, or an insufficient quantity shipped?

(p. 304) A Boy, it would be a wild guess. I couldn't —I mean, it would just be a wild guess. 50 times. I don't know. It would be a wild guess.

Q During the audit period?

A Yes. I would say maybe 10, 12 times a year.

Q And that was—you're saying that is the number of times that you were contacted; is that correct?

A We were contacted, yes. That is a guess, as I say, of course.

Q If you were contacted then, Ashe & Jones, what would you have done—what did you do?

A We would report it to the foundry.

Q Would you make some investigation?

A Not necessarily.

Q If one—if any investigation were required, would it be you that did it, Ashe & Jones?

A Probably, yes. Let me put it this way: If a customer says they got two inch fittings for three inch fittings, we take their word for it, and the foundry would take our word.

Q So in that kind of situation you're acting on behalf—is it correct to say that you're acting on behalf of Tyler in dealing with the customer?

A No, we would go back to the foundry. They would be the ones that would have to decide what to do.

(p. 305) Q But you're not acting for the customer, you're acting for Tyler; is that correct?

A No, we would be acting for Ashe & Jones, and reporting to the foundry.

Q Whatever Tyler told you to do in a situation like that, you would do it; is that correct?

A Yes, they set policy.

* * *

(p. 314) Q Now, I believe you indicated that you have three and a half sales people working for you, including yourself; is that correct?

A That is correct.

(p. 315) Q Can you give me an idea of how often, on an average during the audit period, each of these customers would have been called on by somebody from your company?

A That would vary with the location. Some of them weekly. Some may be monthly, or every other month.

Q Depending on how close they are to Seattle?

A Yes.

Q Are most of them close to Seattle?

A No. About half of those would be in western Washington, roughly.

Q So you're saying that someone from your company would call from—would call on each of these customers on an average of weekly, if they are in western Washington, or monthly?

A That would be a close approximation, yes.

Q Now, you also indicated that you call on engineers, and contractors, and architects; is that correct?

A That is correct.

Q Can you give an approximation of how often they would be called on?

A No.

Q Taking, say, engineers. Are there some that you call on more often than others?

A Yes. The ones that are doing more work would be called on more often, yes.

(p. 316) Q Can you give me a couple of examples of those?

A Names?

Q Uh-huh.

A The firm name, you mean, like—

Q Please.

A Boullion's firm, Dick Stern, Valentine & Fisher.

Q And how often would you say each of those would have been called on during the audit period by someone from your firm?

A Once every six months, perhaps.

May I establish something?

THE COURT: Just respond to questions.

Q (By Mr. Tuttle) How about—can you give me some—who would you call on as far as contractors?

Can you give me some examples?

A Well, there would be Botting.

Q Pardon?

A Botting, B-o-t-t-i-n-g, Warren, Little & Lund.

Q Pardon?

A Warren, Little & Lund. Three names. Gale Mechanical, G-a-l-e, University Mechanical.

Q How often would you call on those, as examples?

A Two or three times a year. Perhaps more on some of the larger ones.

Q Is that pattern fairly typical then of the contractors (p. 317) that you would call on two or three times a year?

A That would be hard to say typical. If they had bid a job, or something, you might call on them a half dozen times in a short time frame. There isn't any typical pattern for that type of call.

Q Would the same be true then for the engineers?

A Yes.

Q Could be more, could be less?

A Yes.

Q Do you view those calls as being important to continuing your relationship with those—that is Tyler's relationship with those engineers and contractors?

A Well, we're not calling on them solely for Tyler. We represent other people.

Q Are those—but my question is: Are those calls important to maintaining Tyler's relationships with them?

A To some extent, yes.

* * *

(p. 321) Q (By Mr. Tuttle) Do you think, Mr. Jones, that during the audit period Ashe & Jones was effective in maintaining good relations for Tyler in the State of Washington?

A Yes.

* * *

(p. 327) Q So as long as you're their representative you get commissions on utility sales regardless of what you do; is that right?

A In the agency business you get commissions on any sales made in your territory from any principal.

Q So it's—why is that? Why is that done? Why should Tyler pay if you didn't make the sale?

A That is not only true of Tyler, that is true of everybody we represent.

Q My question is why.

A Because you're their agent. You receive a commission on what is sold in your territory.

Q You're saying it's the nature of the business, in effect?

A Yes.

* * *

(p. 328) REDIRECT EXAMINATION

By Mr. McKinnon:

Q I'm handing you what has been admitted as Exhibit 20, Mr. Jones, and calling your attention to the third page (p. 329) of that exhibit, which lists the commissions paid Ashe & Jones during the audit period, and I would ask you: Do those commissions paid, as reflected on Exhibit 20, include sales made outside the State of Washington, to your knowledge?

A To my knowledge those would have been out total commissions for our whole territory.

Q That would include sales in Canada?

A Montana.

Q Alaska?

A Yes.

Mr. Tuttle: Counsel, could I see what you're referring to.

Mr. McKinnon: Sure. Exhibit 20.

Q (By Mr. McKinnon) Mr. Jones, do you receive any guidelines from Tyler as to how to conduct the business of Ashe & Jones?

A None whatsoever.

Q Have they ever set any requirements on Ashe & Jones as to how to conduct its business?

A No, never.

Q Have they ever audited the business of Ashe & Jones?

A Never.

Q There was some testimony yesterday with reference that you might quote a sink, or a speciality type product.

(p. 330) For whom would you do that?

A The question was, did we quote. I said, "Yes." But a sink would be another manufacturer. We represent an outfit that is called Alkay Manufacturing that makes sinks. I think I mentioned toilet seats, and we represent an outfift that makes toilet seats, Mr. McKinnon.

Q Does that have anything to do with Tyler?

A None whatsoever.

* * *

(p. 332) DIRECT EXAMINATION

By Mr. Tuttle:

Q Could you state your full name, and business and home addresses, for the record, please?

A Yes. Ronald E. Fahey, 20625 Maplewood Drive, Edmonds, Washington, 98025. Business address is 1016 First Avenue South, Seattle, 98134.

Q How are you employed?

A I'm an independent representative—manufacturers representative.

Q Are you with a particular firm?

A Yes, Mechanical Agents, Incorporated.

Q That address, 1016 First Avenue South, is the address for Mechanical Agents then?

A Yes.

* * *

(p. 343) Q (By Mr. Tuttle) Do you talk to—I assume that you are on a regular basis soliciting orders for Wade; is that correct?

A Yes.

Q In doing so, do you ever have occasion to refer to non-Wade Tyler products?

A No.

Q Is there any advantage—do you ever—you're saying you never refer to a non-Wade Tyler product at all with a customer?

A No.

Q Would the fact that shipments of both Wade and non-Wade Tyler products are made together, would that benefit the customer in any way?

A No.

Q It wouldn't get the product there sooner to him, or products together when he needs both kinds, or anything like that?

A No.

Q Why is that?

A Because orders are shipped from our inventory. We place orders for stock replacement with the factory for shipment to our warehouse. We have got pretty good

* * *

(p. 345) Q Do you ever handle any—have you ever had any non-Wade Tyler products come through your warehouse?

A No. Excuse me. Other than other manufacturers' product that we represent.

Q I said, "non-Wade Tyler products." Other Tyler products from other than from the Wade Division.

A No.

Q Who sets the prices for the Wade products?

A Wade.

Q The prices to the customers?

A Wade.

Q Is that entirely their decision then?

A Yes.

Q Do you provide information about the market to assist them in setting those prices?

A Yes.

EXCERPTS OF DEPOSITION OF JAMES B. HORAN

* * *

(p. 4) Q (By Mr. Tuttle) Mr. Horan, do you utilize the services of the local sales representative in Washington if direct contact from Tyler, Texas doesn't get results from a slow paying customer?

A My reply, I think, was "sometimes."

Q When you—I believe your testimony was that sometimes you—the sales representative would make that contact initially, but then I was inquiring about the situation where the initial contact had been made from Tyler, and has not been fruitful.

Then what happens? Is the sales representative contacted?

A Sometimes.

* * *

(p. 7) Q Do you have knowledge of Tyler's practice with regard to following up on accounts, or collecting accounts, where there has not been yet payment?

Do you have knowledge of that?

A In the broad sense, yes.

Q Again, then my question is: With reference to customers, who are headquartered in Washington, where the initial contact from Tyler, Texas, about nonpayment has not been successful, what are the options available, and customerily followed by Tyler, as far as collecting that account?

A Generally speaking, there are other steps that can be taken by the credit department, without calling on our local representation, to assist us in collecting that debt. Now, one, we advise the customer that no further shipments can be made until such time as the account clears, or an agreement is reached as to when the next check will be written and can be cashed by Tyler Pipe. This does not require the local representative.

Q That would be a contact directly from Tyler?

A That is usually direct contact by a known officer in our credit department.

(p. 8) Q I'm interested in what options are available other than direct from Tyler, Texas, or through the local representative.

A Other than that? Well, if it comes to the worse, then you call upon the credit association, to which we are members, and put that company on file with the credit association, and the credit association then seeks collection.

Q Before that is done, would the local representative be contacted?

A At some point pehaps, yes.

Q You say, "perhaps." Would the local representative be contacted as a matter of course before the credit association became involved?

A Once again, Mr. Tuttle, it might depend on the long term and ongoing relationship with that particular customer. If his tradition and habit has been slow pay,

it might come to pass that it is our decision, made at headquarters, to terminate the relationship with that customer, without, once again, calling into play our local representation.

Q Would it be the usual practice to have the local sales representative become involved if contacts from Tyler, Texas were not successful?

Mr. McKinnon: Objection. That's been (p. 9) asked and answered.

Mr. Tuttle: No, he hasn't answered whether or not that is the usual practice.

Mr. McKinnon: He most certainly has. He said sometimes they might do it.

Mr. Tuttle: "Sometimes" does not answer whether or not it's usual, as opposed to being the exception.

Mr. McKinnon: Go ahead and answer it.

The Witness: No, it's not usual.

Q (By Mr. Tuttle) It's not usual?

A It's not usual.

Q To involve the sales representative.

A No, sir. And may I expand on that?

Mr. McKinnon: Go ahead.

The Witness: The collection of debts is an onerous event in any case, and it should not be the function of local representation to make that an extremely important part of his responsibility to Tyler Pipe. Therefore, Tyler Pipe has established a credit department of sufficient size, and

expertise, to take on that function directly from Tyler, Texas. In all departments, that is our responsibility at Tyler, Texas, to collect the money due us from customers, whoever they might be.

(p. 10) Q (By Mr. Tuttle) Is it the usual practice to involve the local representative before the account is referred for collection by an outside agency?

Mr. McKinnon: Objection. The usual practice is not in issue here. What is in issue is what occurred in Washington during the audit period.

If you can answer, go ahead.

The Witness: Under that framework, I don't know.

Q (By Mr. Tuttle) What do you mean? Under what framework?

A The audit period in the State of Washington. I cannot identify specifics. So my answer would have to be: sometimes.

Q Counsel may have his objection, but I'm wanting to know what—not just in Washington, but during the audit period, what Tyler relies on its sales representatives to do. So I'm asking for your general practice, and I'm saying my question is this:

Was it Tyler's usual practice to involve the local sales representatives in trying to get a payment made from a slow paying customer before that account is referred for collection to an outside agency?

Mr. McKinnon: Objection. It's been asked and answered. Go ahead. You can answer.

(p. 11) The Witness: Once again, I would say: sometimes.

Q (By Mr. Tuttle) More often than not?

Mr. McKinnon: Objection. That is argumentative.

Mr. Tuttle: Counsel, I don't see how it's argumentative to try—

Mr. McKinnon: That's fine. I'm noting my objection on the record. He can go ahead and answer. It will be handled by the Judge. No sense in engaging in colloquy over that.

The Witness: More often than not? Well, I'm going to say yes for the sake—all right, yes.

Q (By Mr. Tuttle) Does Tyler sometimes have changes in the identities of the wholesalers with whom it does business?

A I don't understand that question.

Q Do the wholesalers change?

A You mean the company sells to someone else? It that what you're—

Q No. Do you lose some wholesalers, and get some new ones?

Mr. McKinnon: The question, Mr. Horan, is geared to the State of Washington during the audit period. If you have personal knowledge of any changes (p. 12) during that period.

The Witness: I do not have such knowledge.

Q (By Mr. Tuttle) I want to ask: During the audit period, but outside the State of Washington, did you have chains in wholesalers?

Mr. McKinnon: We're reserving objections. That is clearly irrelevant.

The Witness: I would have to say due to our national activity the answer must be: Yes.

Q (By Mr. Tuttle) When you add a new wholesaler, start doing business with a new wholesaler, do you do an investigation of some kind of that wholesaler?

Mr. McKinnon: Are you talking about someone outside the State of Washington during the audit period?

Mr. Tuttle: Yes.

Mr. McKinnon: Continuing objection.

The Witness: Yes.

Q (By Mr. Tuttle) Who conducts that investigation?

A It's conducted principally by us, since the final determination to accept that customer as a customer is also determined by us.

Q You say primarily by you. Who else would be involved in the investigation?

(p. 13) A Well, the local representation might be involved. Once again, Counsel, this could come from a chain supply house opening a new place of business in the marketplace that we may or may not choose to solicit his business. The local representation would have no responsibility for that whatsoever. That would all accrue to headquarters.

Q In the situation of a chain, you're saying?

A Perhaps a chain, yes. That is an example. It makes my answer cloudy in that respect.

Q I understand that. Assuming it was not a chain, or—assuming it was not a chain, would you ordinarily look to the sales representative for information about the wholesaler before taking it on as a new customer?

Mr. McKinnon: Objection to the form. It assumes facts not in evidence, and a proper foundation has not been laid.

If you can answer, go ahead.

The Witness: In some sense, yes. That is, where is the company located, the size of the billing. But then, once again, it relies on us at the headquarters to examine the profile of that customer. It's financial statement presented to us, and so forth.

Q (By Mr. Tuttle) Yes, I understand what happens, that there is obviously some investigation at headquarters.

(p. 14) I'm trying to find out what you look at the sales representative to find out for you about a new customer.

A Who, what, when, and where answers.

Q So it's a lot—

A Who is it, what are they doing, where is the business located, and so forth.

* * *

EXCERPTS OF DEPOSITION OF WARREN VanDERBECK

* * *

(p. 4) Q Could you describe your position as regional sales manager? What does that responsibility entail?

A The promotion of Tyler products in the area that I have control of, or oversee.

Q Then you have people who report to you for that purpose; is that right?

A Yes. I have some factory people and then I have some representatives that just represent us.

* * *

(p. 6) Q I'm wondering what the differences are between the factory sales people, I guess you call them, and the manufacturer's agents or representatives, those two groups. And the only thing I've heard so far is, it sounds like the manufacturer's representatives can represent a number of—

A Right.

Q Whereas the manufacturer's or the factory sales people represent just Tyler?

A Just Tyler, right.

Q Are there any other differences between those two classifications?

A I guess there is a difference in the rate of commissions, but that would probably be the only thing that I could recall.

Q. Is there one category that is higher than the other?

A Yes. Uh huh.

Q Which is higher?

A The manufacturer's reps would be on a little higher commission rate.

Q Do the factory sales people—am I using the right terminology, is that what you call them?

A. Factory sales people, yes.

(p. 7) Q Do they get any benefits from the company or anything like that, any insurance or—

A They are in the insurance program, yes.

Q And the manufacturer's representatives do not get insurance, then?

A They are independent businessmen, right.

Q So that would be another difference, then, between them?

A Uh huh.

Q Any other differences that come to mind?

A Not that come to mind, no.

Q Does either of the classes have office space provided, say, by the company?

A No.

Q Either receive a car to use or anything like that?

A No.

Q But other than the insurance, then, you are saying that both of them are strictly on commission?

A Right.

* * *

(p. 11) Q Well, let's come back to that. Does the process by which a sale is made to a customer vary as between the (p. 12) factory sales people and the sales representatives?

A I would say no.

* * *

(p. 55) Q You also receive information back from these people, outside sales people, or the representatives; is that right?

A Yes, uh huh.

Q Are they pretty much your source of information as far as the market conditions in their areas?

A Pretty much, yes.

Q And so they, on a routine or regular basis, provide you with that kind of information? That is, what the market is like in their area?

A Well, whenever the market would change, uh huh.

Q Is that just a sort of—

A Nothing on a routine type of—

Q Is that just sort of understood that that is—or expressly stated that that is one of their functions?

A Well, they provide us with that information, they (p. 56) think that we need to know it, so—

Q Do you have any other source for that information?

A Not really, no.

* * *

(p. 62) Q Oh. By the time the representative phones in the order, has he first initiated a check on the customer; is that right?

A No, not necessarily. He makes the decision whether he wants to sell that customer, and then he gets the customer to fill the credit application, which is forwarded to Tyler, and then the Credit Department either says yea or nay.

Q And so that precedes the order, or—

A A new order, yes.

Q From a new customer?

A Uh huh.

Q Let me make sure I understand. The sales representative would say to the new customer, "We have got to get your checked out before we can process your order," is that basically it?

A Well, he has them fill out a credit application, right.

Q Okay. So the credit application, then, is sent (p. 63) from the representative to the Credit Department in Texas?

A Right.

Q Is checked out?

A Right.

Q Then comes back yea or nay?

A Right.

Q And then the order can be sent in.

* * *

(p. 77) Q Now, again, just by way of summary, we have gone through most aspects of the sales transactions. Does this recall to your mind any differences between the factory sales people or the so-called independent or manufacturer's representatives?

(p. 78) A No.

Q As far as the way they operate or anything else?

A None that I can—

Q Other than what you have already listed?

Mr. McKinnon: I'm going to note an objection on the record as to the form of that question.

By Mr. Tuttle:

Q I believe you previously indicated a couple of differences, that is, that the factory sales representatives, you didn't know of any that had written contracts, for example, were as you thought some of the representatives did. Okay. That would be one difference, right?

A Yes.

Q And the factory sales people had some insurance benefits, maybe, that the manufacturer's representatives didn't personally, is that right?

A Right.

Q And I believe you also indicated that in general, the factory sales people probably covered the areas where the territories where Tyler had a little bigger market share; is that right?

A Well, close to home, right.

Q Close to home. Okay. Are there any differences other than those, as far as you are concerned, between the operations of the sales persons, factory sales people, as (p. 79) opposed to the manufacturer's representatives?

A None that I can think of.

* * *

DEFENDANT'S EXHIBIT NO. 4

INTERROGATORY NO. 4: For each department, division, and/or geographic or functional subdivision identified in the preceding answer, please state:

(a) Its function or purpose, including any changes therein, during the audit period;

(b) The location of its headquarters, its principal place of business, and the region it served, including any changes, during the audit period;

(c) If you have not already done so, the organizational structure of its management personnel during the audit period, identifying them (as defined above), including any changes.

ANSWER:

All of the individuals named in the attached organizational charts numbered 4.1, 4.2, 4.3, and 4.4 are employees of Tyler Pipe Industries of Texas, Inc. All except Mr. Markle and Mr. Schantzenbach make their home and work in Tyler, Texas. Mr. Markle, who left the company in 1981, lived in Orefield, Pennsylvania and worked in Macungie, Pennsylvania. Mr. Schantzenbach, who replaced Mr. Markle, lives and works in Macungie.

ATTACHMENT TO INTERROGATORY NO. 4

TYLER PIPE INDUSTRIES, INC.
MARKETING DIVISION

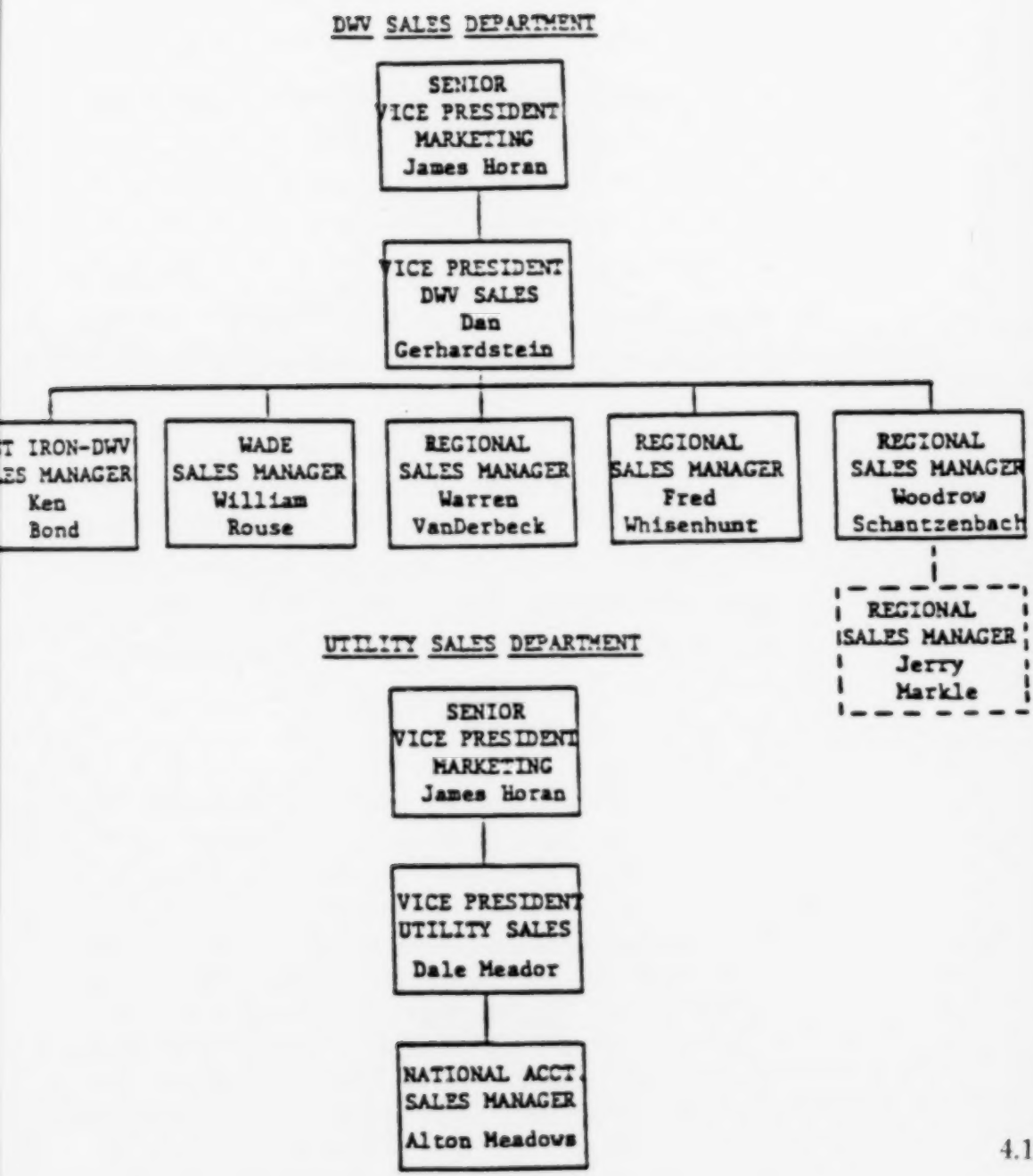
(a) Function — Receive and process customer orders.

(b) Location of headquarters — Tyler, Texas.

* Principal place of business — Tyler, Texas.

* Region served — USA.

(c) Organizational structure of management personnel:



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DEFENDANT'S EXHIBIT NO. 5

INTERROGATORY NO. 4-2: State, describe and explain:

(a) The respective functions of the DWV Sales and Utility Sales departments in the Marketing Division, including but not limited to the ways in which their respective functions are different and the ways in which they are coordinated or similar;

(b) What, if anything, the initials "DWV" for the DWV Sales Department stand for or signify;

* * *

(d) The respective functions and duties of your Vice President DWV Sales, Cast Iron-DWV Sales Manager, Wade Sales Manager, Regional Sales Manager Warren VanDerbeck, Vice President Utility Sales, and National Acct. Sales Manager . . .

* * *

See attached. Description of Duties is from the Job Descriptions.

ANSWER:

(A.) The products sold by the Utility Sales department reach the market generally through wholesale "waterworks" distributors, whose customers are "utility" contractors, cities, etc. Utility Sales may or may not, use the same sales representatives as the DWV Sales department. The products sold by the DWV Sales department reach the market generally through wholesale plumbing supply distributors, whose customers are "mechanical" and/or "plumbing" contractors. It is the general function for both to accept and fill orders,

and generate and maintain files on the appropriate paperwork pertaining to those orders.

(B.) The initials DWV signify drainage, waste, and vent (piping systems).

* * *

(D.) *Vice President DWV Sales*

FUNCTION:

Under general direction of the Senior Vice President of Marketing, directs all activities pertaining to the DWV Sales Division such as the pricing, promotion and sale of DWV Products and all administrative policies of the Company as related to DWV Division Sales.

DUTIES:

* * *

2. Directs, supervises, evaluates and oversees the performance of Field Sales Representatives on the sale and promotion of all DWV Products and/or revisions in products. Assists Field Representatives in handling customer problems. Reviews and approves DWV Sales monthly commission statements for all Field Representatives. Makes recommendations to Senior Vice President of Marketing on the hiring of new Representatives as vacancies occur.

* * *

(D.) *Regional Sales Manager—Warren Van Derbeck*

FUNCTION:

Under general direction of the Vice President—DWV Sales, performs a combination of selling and promotion duties pertaining to Wade products.

DUTIES:

1. Responsible for coordinating and visiting with sales representatives as assigned so as to keep representatives up-to-date on all phases of Wade product sales and engineering which involves giving instructions on the complete line of Wade products, job take-offs, working from plans and specifications, and the proper method of preparing and pricing quotations and with special emphasis being placed on carrier and shokstop layouts.

2. Assists representatives with calls on mechanical contractors and engineers so as to best serve the mechanical contractors with project layouts and installations and with service to mechanical engineers in an effort to secure Wade specifications. Also assists at job sites with various installation problems, etc.

* * *

4. Responsible for various other duties such as assisting with the planning and preparation of sales meetings; may help prepare specification catalogs and price lists; assist representatives with the closing of orders as necessary; trains representatives on the value of new products with emphasis on proper usage and specifications of same.

* * *

(D.) Vice President—Utility Sales

FUNCTION:

Under general direction of the Senior Vice President of Marketing, directs all activities pertaining to the Utility Sales Division such as the pricing, promotion and sale of Utility Products and all administrative policies of the Company as related to Utility Division Sales.

DUTIES:

* * *

2. Directs, supervises, evaluates and oversees the performance of Field Sales Representatives on the sale and promotion of all Utility products. Responsible for the proper indoctrination and training of Field Representatives on new Utility Products and/or revisions in products. Assists Field Representatives in handling customer problems. Reviews and approves Utility Sales monthly commission statements for all Field Representatives. Makes recommendations to Vice President of Marketing on the hiring of new Representatives as vacancies occur.

* * *

DEFENDANT'S EXHIBIT NO. 9

INTERROGATORY NO. 8-2: State, describe and explain:

(a) How the functions of Tyler Pipe Industries of Texas, Inc. relate to those of your other subsidiaries;

* * *

ANSWER:

(A) Tyler Pipe Industries of Texas, Inc. produces all cast iron and pressure pipe and fittings and specification drainage castings sold and distributed by Tyler Pipe Industries, Inc. (Delaware).

(B) Cast iron and pressure pipe and fittings sold in Washington were manufactured by Tyler Pipe Industries of Texas, Inc. Tyler Plastics Company produced plastic pipe and fittings which were sold in Washington.

(C) Tyler Pipe Industries, Inc. (Delaware) handles sales and distribution of products manufactured by Tyler Pipe Industries of Texas, Inc. and Tyler Plastics Company.

DEFENDANT'S EXHIBIT NO. 13

INTERROGATORY NO. 12: Identity, as defined above, each employee, agent, independent contractor, or other individual who was compensated or paid in any way by Tyler Pipe or any subsidiary and either resided, was physically present, or carried on any activity in Washington at any time during the audit period.

ANSWER:

1. Ashe & Jones, Inc.
2. Bridgeport Sales, Ltd. (Formerly J. G. Beard Co.)
3. Mechanical Agents, Inc.
4. Warren VanDerbeck
5. Manley Hendricks
6. Dan Gerhardstein
7. Dale Meador
8. Alton Meadows

DEFENDANT'S EXHIBIT NO. 15

INTERROGATORY NO. 13: For each individual identified in the answer to Interrogatory No. 12, describe all his or her Washington contracts (residence, presence, activities, etc.) during the audit period, including the dates thereof. Also, identify every document now or ever in your possession (or the possession of any subsidiary) pertaining to each such contract.

ANSWER:

The three companies (1, 2 & 3 under #12 above) handle all sales functions pertaining to our products. The balance of the personnel are located in Tyler, Texas and maintain liason between Tyler Pipe and its subsidiaries and the independent representatives.

DEFENDANT'S EXHIBIT NO. 16

INTERROGATORY NO. 18: Identify each sales representative of Tyler Pipe (or any subsidiary) which was present in Washington at any time during the audit period.

ANSWER:

See numbers 1, 2 & 3 under #12.

DEFENDANT'S EXHIBIT NO. 17

INTERROGATORY NO. 20: For each sales representative identified in the answer to Interrogatory No. 18, state the total dollar volume of Washington sales in which it was involved in any way on behalf of Tyler Pipe or any subsidiary during each year of the audit period. If any Washington sales were made or entered into by Tyler Pipe or any subsidiary directly (without involvement of a sales representative), separately state the total dollar volume of such direct sales during each year of the audit period. If the total of the answers to the preceding two sentences, *i.e.*, sales through sales representatives plus direct sales, does not constitute the total of all sales in Washington customers during the audit period, explain the difference.

ANSWER:

Year	Ashe & Jones	J. G. Beard	Mechanical Agents
1976	3,208,533	235,852	154,130
1977	3,961,831	275,244	140,896
1978	4,845,311	338,403	110,870
1979	5,629,888	364,837	155,955
1980	4,699,547	341,262	441,063

All sales made in Washington resulted in payment of commission to the independent sales representative in whose territory the customer was located even if the customer itself directly contacted Tyler Pipe or its subsidiaries.

DEFENDANT'S EXHIBIT NO. 21

INTERROGATORY NO. 25-2:

* * *

(c) For any sale in Washington during the audit period by you or any subsidiary, was the customer's order initially received by a sales representative and thereafter transmitted by that representative to you or the subsidiary?

(d) If your answer to part (c) is yes, state as nearly as can be determined both the number of orders thus transmitted by a sales representative and the total number of *all* orders (including orders direct to you or a subsidiary) for delivery in Washington during the audit period.

ANSWER:

* * *

(C.) Yes

(D.) As nearly as can be determined the number of orders transmitted by a sales representative in the state of Washington was:

1976	1977	1978	1979	1st 9 MOS 1980
1,371	1,615	1.442	1,693	1.507

The total number of all orders for delivery in Washington during the audit period was:

1976	1977	1978	1979	1st 9 MOS 1980
1,953	2,329	2,522	2,531	2,103

* * *

DEFENDANT'S EXHIBIT NO. 22

INTERROGATORY NO. 27: For each sales representative identified in the answer to Interrogatory No. 18, describe how, if at all, you or any subsidiary either received or gave information from or to that representative during the audit period regarding market conditions, possible needs for your or your subsidiary's existing products, possible needs for new products or new or different designs for existing products, names of customer purchasing agents or other buyers, or any other information relative to marketing or sales of products of Tyler Pipe or any subsidiary.

ANSWER:

None given.

Market conditions, customer information and product information received verbally.

DEFENDANT'S EXHIBIT NO. 23

INTERROGATORY NO. 27-2:

* * *

(e) State, list and describe each source of information obtained by you or any subsidiary during the audit period for or including the Washington State market regarding market conditions, actual and potential customers, and products.

ANSWER:

* * *

(E.) Ashe & Jones, Inc.
Mechanical Agents, Inc.

DEFENDANT'S EXHIBIT NO. 24

INTERROGATORY NO. 27-3

(a) Identify each document or natural or non-natural person from which or from whom you or any subsidiary has received since January 1, 1976 information about the Washington market for your (or its) products. If all such information was obtained from sales representatives, you may so state and only identify such representative(s) by company name(s).

* * *

ANSWER:

(A) ALL SUCH INFORMATION WAS COMMUNICATED ORALLY FROM SALES REPRESENTATIVES, ASHE & JONES, INC. AND MECHANICAL AGENTS, INC.

DEFENDANT'S EXHIBIT NO. 25

INTERROGATORY NO. 28: For each sales representative identified in the answer to Interrogatory No. 18, identify all employees or other agents of Tyler Pipe or any subsidiary who communicated with the sales representative on the matters identified in the preceding interrogatory. For each employee or agent, estimate the frequency of those communications during the audit period.

ANSWER:

Numbers 4, 5, 6, 7 & 8 of #12.

Average once a month.

DEFENDANT'S EXHIBIT NO. 27

INTERROGATORY NO. 30: For each sales representative identified in the answer to Interrogatory No. 18, describe all services performed by that representative on behalf of Tyler Pipe or any subsidiary during the audit period. To the extent those services included solicitation of sales for Tyler Pipe or any subsidiary, describe the manner in which the representative solicited such sales, including the territory within Washington in which each representative operated, the means by which each representative contacted potential and/or former customers, and the frequency of those contacts.

ANSWER:

Quotations of our products for specific construction projects and personal calls soliciting an order. Calls made in person or by phone. We have no means of knowing frequency of such contacts.

Ashe & Jones, Inc.—Covers the State of Washington less the following counties: Wahkiakum, Cowlitz, Skamania, Klichitat, Benton, Franklin, Walla Walla. Soil Division.

Mechanical Agents, Inc. represents us in the same area. For Wade only.

Bridgeport Sales, Ltd. represents us for both Divisions in the above listed counties.

DEFENDANT'S EXHIBIT NO. 28

INTERROGATORY NO. 30-2:

(a) In your answer to defendant's first interrogatory number 30, you stated that all the services performed by Washington sales representatives on behalf of you or any subsidiary during the audit period consisted of quotations of your products and calls soliciting orders. State, describe and explain each other such service performed by a sales representative, including but not limited to furnishing of information about market conditions, customers, and products, handling particular problems as they arose, inspecting products or installations, and otherwise servicing customer accounts.

(b) Your answer to defendant's first interrogatory number 3 included reference to a "Soil Division." For that division state

(1) Its function or purpose, including any changes therein during the audit period;

(2) The location of its headquarters, its principal place of business, and the region it served, including any changes, during the audit period; and

(3) The organizational structure of its management personnel during the audit period, identifying them (as defined above), including any changes.

(c) Name the divisions for which Bridgeport Sales, Ltd. represented you during the audit period.

ANSWER:

(A) Washington sales representatives furnished information about market conditions and customers in the state of Washington.

(B) Soil Division is a name used internally to describe the DWV Division excluding Wade (specification drainage) products.

(1) Same as DWV Division

(2) Same as DWV Division

(3) Same as DWV Division

(C) DWV, Utility and Wade.

DEFENDANT'S EXHIBIT NO. 30

INTERROGATORY NO. 33: For each sales representative identified in the answer to Interrogatory No. 18, describe its efforts during the audit period to maintain and improve the name recognition, market share, goodwill, and customer relations of Tyler Pipe and its subsidiaries.

ANSWER:

This is handled entirely by independent sales representatives through sales calls.

DEFENDANT'S EXHIBIT NO. 33

INTERROGATORY NO. 38: During the audit period, were any offers or other potential sales arranged by a sales representative ever rejected by you or any subsidiary? If so, state how many offers and potential sales were accepted and how many rejected by you or any subsidiary during the audit period.

ANSWER:

No.

DEFENDANT'S EXHIBIT NO. 40

INTERROGATORY NO. 47-3:

(a) Please state or re-state your answer to defendant's (second) Interrogatory No. 47-2. (The copy provided to counsel did not have an answer.) Specifically, has Tyler Pipe or any subsidiary paid to any other state any tax measured in whole or in part by sales in the State of Washington during the audit period? If your answer is yes, list each such state and, for each, the type of tax paid and the dates and amounts of payment.

* * *

ANSWER:

(A) No tax measured by sales in the State of Washington.

* * *

DEFENDANT'S EXHIBIT NO. 41

TYLER PIPE & FOUNDRY COMPANY
P. O. BOX 2027
TYLER, TEXAS

SALES REPRESENTATION AGREEMENT

THIS AGREEMENT, made the 2nd day of MAY, 1966, between TYLER PIPE & FOUNDRY COMPANY, a Texas corporation, having its principal place of business at Swan, Texas, hereinafter called "Manufacturer", and Ashe & Jones Company of Seattle, Washington, hereinafter called "Representative".

AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. *PRODUCTS*: Manufacturer hereby grants to Representative exclusive selling rights of Manufacturer's products listed in Exhibit "A", in the territory covered by this agreement. The Representative agrees to handle no other product that is or may be competitive to the products covered by this agreement.

2. *TERRITORY*: Manufacturer hereby assigns the territory described in Exhibit "A" to Representative on a protected, exclusive basis for the sale of products covered by this agreement, through the wholesale trade. Representative shall receive no commission except on sales made in his territory. Representative is not authorized to sell for export.

3. *PRICES*: Manufacturer agrees to notify Representative promptly in writing or telegraphically at the address hereon noted, or as may be otherwise requested in writing by Representative, of all price changes. Representative shall promptly notify his customers of such price changes. No increase shall be effective with respect to orders taken by Representative on quotations made by Manufacturer prior to time he shall have received notice of such increase in price. Any reduction in the price shall

apply to all orders that have been placed with the Manufacturer but have not been delivered at the time such reductions in price are made.

4. *CREDIT*: Manufacturer shall have the right to approve the credit of any customer. Representative agrees that he will not negotiate business with concerns of doubtful financial responsibility, and that if any special or unusual financial or other risk is involved in the sale of merchandise, he will fully acquaint Manufacturer with all the facts relating thereto at the time the order is placed. Manufacturer may refuse or reject, either in whole or in part, any order received by the Representative, or may cancel any order in whole or in part, previously accepted by Manufacturer but not shipped, which in the opinion of Manufacturer would result in possible loss to Manufacturer or Representative by its completion. Representative shall not make any commitment binding upon Manufacturer unless he has written permission from Manufacturer to do so.

5. *COMMISSIONS*: Manufacturer agrees to credit Representative with commissions on each approved order on all products covered by this agreement, in accordance with the Commission Schedule, Exhibit "A", upon completion of each respective sale made within his territory for delivery within said territory. Payment of commissions for material shipped will be made within twenty (20) days after close of each four (4) week accounting period as to the amounts due for such accounting period as determined in accordance herewith.

If the customer neglects, fails or refuses to pay any part of the purchase price on a sale where the commission has been paid to the Representative or credited to his account and/or whenever it becomes necessary to take back any of Manufacturer's products sold under this agreement, Representative's commission account shall be charged back with the proportional amount of commission originally credited.

6. *DURATION OF AGREEMENT*: This agreement covers all transactions between Representative and Man-

ufacturer from the date of this agreement. All previous agreements, if any, are hereby cancelled. No changes or additions to the terms of this agreement shall be binding on Manufacturer unless made by an amendment signed by its corporate officers. This agreement shall continue in force and effect until terminated by either party on thirty (30) days notice in writing within one (1) year of the effective date of this contract; sixty (60) days notice in writing within two (2) years of the effective date of this contract; ninety (90) days notice in writing within three (3) years of the effective date of this contract; except that any action of Representative not in accordance with established business practices or tending to impair the integrity or reputation of Manufacturer shall be just and sufficient cause of immediate cancellation by Manufacturer.

7. *LAW APPLICABLE*: This agreement shall be construed in accordance with the laws of the State of Texas. Jurisdiction and venue of any controversy in relation hereto shall be in Smith County, Texas.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

[ASHE & JONES
COMPANY]
By: /s/ [Illegible]
Title: Pres.
REPRESENTATIVE
Address of Representative:
225 Terry Ave N.
Seattle, Wash.

TYLER PIPE & FOUNDRY
COMPANY
By: /s/ James B. Horan
Title: Vice-President, Sales
MANUFACTURER
Address of Manufacturer:
P. O. Box 2027
Tyler, Texas

TYLER PIPE & FOUNDRY COMPANY
P. O. BOX 2027
TYLER, TEXAS

EXHIBIT "A"

TERRITORIES COVERED

REPRESENTATIVE	*TERRITORY*
Ashe & Jones Company 225 Terry Avenue, North Seattle, Washington 98109	51

TERRITORY COVERED:

All State of Montana
Province of British Columbia.
All State of Washington except the following counties: (Cowlitz, Clark, Skamania, Klickitat, Benton, Franklin and Walla Walla).

The following counties in Idaho: (Boundary, Bonner, Keotonia, Shoshone, Benewah, Latah, Clearwater, New Perce, Lewis, Idaho).

COMMISSIONS

	Product	*Commission Basis*
a)	Soil Pipe & Soil Fittings	$ 4.13 Per Ton
b)	Ty-Seal Gasket	2.5%
c)	Staple Specials & Drains	$10.00 Per Ton
d)	Ty-Tool	6.31%
e)	IPS Pipe	$ 1.50 Per Ton
f)	Watermain Pipe	$ 1.50 Per Ton
g)	Specification Drains	
h)	SSB Watermain Fittings	$10.00 Per Ton
i)	Flanged Watermain Fittings	$10.00 Per Ton

j) Fabricated Watermain Pipe $10.00 Per Ton

k) All other Watermain Fittings; Valve, Roadway & Service Boxes; Manhole Rings & Covers; Manhole Steps $ 6.00 Per Ton

l) ....

m) ....

n) ....

o) Freight .....

In extreme competitive situations it may be necessary to reduce commission basis below that stated above, although we will make every effort to maintain the commission structure.

NO COMMISSION will be paid on any watermain materials which Tyler Pipe & Foundry Company must purchase from another company.

PLAINTIFF'S EXHIBIT NO. 45

TYLER PIPE
Subsidiary of
Tyler Corporation

GUIDE TO ORDERING

1. To avoid errors, specify catalog item numbers.

2. When ordering Cast Iron Soil Pipe or Cast Iron Soil Fittings be sure to specify class desired; Service Weight (SV) or No-Hub (NH).

3. When ordering Regular Fittings and Closet Bends, give diameters in this order:

   1. Main 2. Branch or Branches

   When ordering Reducing or Increasing Fittings give diameters in this order:

   1. Spigot of Main 2. Hub of Main 3. Branch of Branches

4. When ordering Long Fittings, (a) Long Bends are measured from the Spigot to the Center Line of the Hub; (b) Long Branch Fittings are measured from the Spigot to the Base of the Hub.

5. To specify right or left side inlets, position fittings as follows and read left or right:

   a. Regular Bends and Offsets, face open Hub with Spigot down.

   b. Branch Fittings, face open Hub of Main with Branch down.

   c. Traps and Closet Bends, face bend as it would be in installed position with hub toward you.

6. All pipe and fittings furnished coated unless otherwise specified.

7. For items not shown in this catalog, call the nearest Sales Office or Plant for quotations and availability.

CONDITIONS OF SALE

Please review individual basic delivered price sheets for each sales division's policy regarding terms, delivery, credit for returns and minimum invoicing.

All claims for return material must be made within ten days after receipt of shipment. When orders have been filled correctly, no credit will be allowed for goods returned unless our written consent has been received. All goods so returned, if accepted, will be credited at cost or prevailing price, whichever is lower at the time, less a minimum handling, transportation and re-conditioning charge when returned on company trucks. Return material shipped LCL or LTL freight must be returned prepaid. Items made to order, especially for an order, are not subject to return or cancellation.

All goods are shipped at purchaser's risk. Claims for damage in transit must be filed with the carrier involved. Shipments should be carefully examined on arrival before signing a receipt. A signed bill of lading or delivery ticket with no exceptions noted will indicate the count, description and condition is satisfactory.

Federal, state and local taxes, if any, will be added to invoices.

All orders are subject to approval of our Home Office before final acceptance. Cancellation or changes in orders are not allowed without our consent. We reserve the right to refuse, cancel or backorder items not in stock or not manufactured by us, whether or not they are shown in this catalog.

All orders and agreements are contingent upon federal, state or municipal action or regulation; strikes or other labor troubles; fire; damage or destruction of merchandise or manufacturing plants; inability to obtain raw materials, labor, fuel or supplies or any other causes whatsoever beyond our control; whether or not similar to any of the causes specifically enumerated, any of which shall release us from performance without liability on orders, agreements, or portions thereof affected.

All orders will be billed according to price in effect at time of shipment. All prices are subject to change without notice.

Possession of this catalog shall not be construed as an offer to sell the products listed.

We warrant to the original purchaser that products of our manufacture are free from defects in material and workmanship. Our obligation under this warranty shall be limited to the repair or replacement at our plant of any products which may prove defective and shall not render us liable for any other or consequential damage to buyer or to any other person.

This warranty is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on our part, and we neither assume nor authorize any other person to assume for us any other liability in connection with the sale of our products.

Tyler Pipe, P.O. Box 2027, Tyler, Texas 75710
(214) 882-5511, Telex 73-5410

PLAINTIFF'S EXHIBIT NO. 46

TYLER PIPE INDUSTRIES, INC.
STATE OF TEXAS FRANCHISE TAXES

	1976	1977	1978	1979	1980
TPI—Texas	$ 6,846.75	$23,077.50	$27,897.00	$31,258.75	$35,440.75
TPI—Delaware	1,619.25	2,282.25	2,265.25	3,166.25	3,353.25
Wade, Inc.	2,103.75	2,843.25	2,558.50	2,329.00	2,184.50
Tyler Plastics Co.	854.25	964.75	1,037.00	1,534.25	701.25
Tyler Sand	—	—	—	—	—
Swan Development Co.	1,258.00	1,453.50	1,649.00	1,836.00	—
M. J. Harvey Foundation	144.50	157.25	170.00	182.75	199.75
Tyler Custom Molding	55.00	55.00	—	—	—
TOTAL	$12,881.50	$30,833.50	$35,576.75	$40,307.00	$41,879.50

PLAINTIFF'S EXHIBIT NO. 47

TYLER PIPE INDUSTRIES, INC.
AD VALOREM TAXES

	SCHOOL	STATE & COUNTY	JR. COLLEGE	TOTAL
1976	$150,417.28	$34,296.78	$ 9,968.79	$194,682.85
1977	158,436.48	35,423.71	10,361.43	204,221.62
1978	138,787.70	43,027.37	10,945.72	192,760.79
1979	147,722.86	43,317.10	11,012.08	202,052.04
1980	154,711.05	44,708.09	14,364.24	213,783.38

PLAINTIFF'S EXHIBIT NO. 49

TYLER PIPE INDUSTRIES, INC.
Number Of Invoices Issued
By Division

RE: INTERROGATORY 25-2

11/28/83

Number of Orders Transmitted By a Sales Representative in the State of Washington

	1976	1977	1978	1979	1st 9 Mos. 1980
SOIL	707	825	922	953	532
UTILITY	0	0	0	0	0
PLASTIC	167	173	81	181	47
TOTAL TYLER	874	998	1003	1134	579
WADE	497	617	439	559	928
TOTAL	1371	1615	1442	1693	1507

Number of All Orders for Delivery in Washington

SOIL	721	842	941	973	543
UTILITY	555	680	1050	803	565
PLASTIC	170	177	83	185	48
TOTAL TYLER	1446	1699	2074	1961	1156
WADE	507	630	448	570	947
TOTAL	1953	2329	2522	2531	2103

SUPREME COURT OF THE UNITED STATES

No. 85-1963

Tyler Pipe Industries, Inc.

Appellant

v.

Washington Department of Revenue

Appeal from the Supreme Court of Washington,

The statement of jurisdiction in this case having been submitted and considered by the court, probable jurisdiction is noted. This case is consolidated with 85-2006, *National Can Corporation, et al. v. Washington State Department of Revenue* and a total of one hour is allotted for oral argument.

October 6, 1986

Justice Powell and Justice Scalia took no part in the consideration or decision of this petition.

RELEVANT DOCKET ENTRIES IN CASE NO. 85-2006

DOCKET ENTRIES OF THURSTON COUNTY SUPERIOR COURT

Date	*Entry*	*Case Number*
12/31/84	Complaints for Refund of Taxes filed for:	
	International Paper Company,	84-2-01888-4
	Chrysler Corporation,	84-2-01889-2
	ASC Pacific, Inc.,	84-2-01890-6
	Korry Electronics Co.,	84-2-01892-2
	Data I/O Corporation,	84-2-01893-1
	R.A. Hanson Co., Inc. & RAHCO, Inc.,	84-2-01894-9
	Ford Motor Company,	84-2-01895-7
	Western Steel Casting Company,	84-2-01896-5
	AMF, Inc., AMF Voit, Inc., Ben Hogan Co., Paragon Electric Co., Inc., and AMF Head Sportswear, Inc.,	84-2-01898-1
	Westinghouse Electric Corporation,	84-2-01899-0
	Basic American Foods, Inc.,	84-2-01901-5
	Peter Pan Seafoods, Inc.,	84-2-01902-3
	Lone Star Industries,	84-2-01903-1
	Cominco American Inc. & Cominco Electronic Materials Inc.,	84-2-01904-0
	Fentron Building Products Co.,	84-2-01907-4
	Heath Tecna Aerospace Co.,	84-2-01908-2
	Clark Equipment Company,	84-2-01909-1
	Advanced Technology Laboratories, Inc.,	84-2-01911-2
	Cummins Engine Company, Inc.,	84-2-01912-1
	Miller Brewing Company,	84-2-01913-9
	American Cyanamid Company, Shulton, Inc. and Jacqueline Cochran, Inc.,	84-2-01914-7

Date	*Entry*	*Case Number*
12/31/84	General Brewing Company,	84-2-01915-5
	Longview Fibre Company,	84-2-01917-1
	Pabst Brewing Company and Olympia Brewing Company,	84-2-01918-0
	Quinton Instrument Company,	84-2-01919-8
	E. M. Matson, Jr.,	84-2-01920-1
	A. H. Robins Company,	84-2-01921-0
	Armstrong World Industries, Inc. and Thomasville Furniture Industries, Inc.,	84-2-01922-8
	G. Heileman Brewing Co., Inc. and Rainier Brewing Company,	84-2-01923-6
	Allis-Chalmers Corporation,	84-2-01924-4
	North Pacific Processors, Inc., Alaska Pacific Seafoods, and Kenai Salmon Packing Co.,	84-2-01925-2
	Bethlehem Steel Corporation,	84-2-01926-1
	U.S. Oil & Refining Co.,	84-2-01927-9
	Noel Canning Corporation,	84-2-01928-7
	Trident Seafoods Corporation,	84-2-01929-5
	Foseco, Inc.,	84-2-01930-9
	Mattel, Inc.,	84-2-01931-7
	Welch Foods, Inc.,	84-2-01932-5
	Kalama Chemical, Inc.,	84-2-01891-4
	Xerox Corporation,	84-2-01916-3
	National Can Corporation,	84-2-01900-7
1/21/85	First Amended Complaints For Refund of Taxes Filed For:	
	International Paper Company,	84-2-01888-4
	Chrysler Corporation,	84-2-01889-2
	ASC Pacific, Inc.,	84-2-01890-6

Date	*Entry*	*Case Number*
1/21/85	Korry Electronics Co.,	84-2-01892-2
	Data I/O Corporation,	84-2-01893-1
	R.A. Hanson Co., Inc. & RAHCO, Inc.,	84-2-01894-9
	Ford Motor Company,	84-2-01895-7
	Western Steel Casting Company,	84-2-01896-5
	AMF, Inc., AMF Voit, Inc., Ben Hogan Co., Paragon Electric Co., Inc., and AMF Head Sportswear Co., Inc.,	84-2-01898-1
	Westinghouse Electric Corporation,	84-2-01899-0
	Basic American Foods, Inc.,	84-2-01901-5
	Peter Pan Seafoods, Inc.,	84-2-01902-3
	Lone Star Industries,	84-2-01903-1
	Cominco American Inc. & Cominco Electronic Materials Inc.,	84-2-01904-0
	Fentron Building Products Co.,	84-2-01907-4
	Heath Tecna Aerospace Co.,	84-2-01908-2
	Clark Equipment Company,	84-2-01909-1
	Advanced Technology Laboratories, Inc.,	84-2-01911-2
	Cummins Engine Company, Inc.,	84-2-01912-1
	Miller Brewing Company,	84-2-01913-9
	American Cyanamid Company, Shulton, Inc. and Jacqueline Cochran, Inc.,	84-2-01914-7
	General Brewing Company,	84-2-01915-5
	Longview Fibre Company,	84-2-01917-1
	Pabst Brewing Company and Olympia Brewing Company,	84-2-01918-0

Date	*Entry*	*Case Number*
1/21/85	Quinton Instrument Company.	84-2-01919-8
	E. M. Matson, Jr.,	84-2-01920-1
	A. H. Robins Company,	84-2-01921-0
	Armstrong World Industries, Inc. and Thomasville Furniture Industries, Inc.,	84-2-01922-8
	G. Heileman Brewing Co., Inc. and Rainier Brewing Company,	84-2-01923-6
	Allis-Chalmers Corporation,	84-2-01924-4
	North Pacific Processors, Inc., Alaska Pacific Seafoods, and Kenai Salmon Packing Co.,	84-2-01925-2
	Bethelem Steel Corporation,	84-2-01926-1
	U.S. Oil & Refining Co.,	84-2-01927-9
	Noel Canning Corporation,	84-2-01928-7
	Trident Seafoods Corp.,	84-2-01929-5
	Foseco, Inc.,	84-2-01930-9
	Mattel, Inc.,	84-2-01931-7
	Welch Foods, Inc.,	84-2-01932-5
	Kalama Chemical, Inc.,	84-2-01891-4
	Xerox Corporation,	84-2-01916-3
	National Can Corporation,	84-2-01900-7
1/25/85	Motion For Partial Summary Judgment Filed For Kalama Chemical, Inc.,	84-2-01891-4
1/28/85	Motion for Preassignment of	
	Xerox Corporation,	84-2-01916-3
	Kalama Chemical, Inc.	84-2-01891-4

Date	*Entry*	*Case Number*
1/31/85	Motion For Partial Summary Judgment Filed For Xerox Corporation	84-2-01916-3
2/ 4/85	Order Preassigning	
	Xerox Corporation,	84-2-01916-3
	Kalama Chemical, Inc.	84-2-01891-4
3/18/85	Order Preassigning	
	National Can Corporation	84-2-01900-7
5/21/85	Complaints for Refund of Taxes Filed For	
	Alaskan Copper Companies, Inc.,	85-2-00863-1
	The Firestone Tire & Rubber Co.,	85-2-00864-0
	General Electric Co.,	85-2-00865-8
	Honeywell Inc.,	85-2-00866-6
	Reynolds Metals Corporation,	85-2-00867-4
	Square D Company,	85-2-00868-2
	E. R. Squibb & Sons, Inc., Spacelabs, Inc., Charles of the Ritz Group, Ltd., and Edward Weck & Company, Inc.,	85-2-00869-1
	Alpac Corporation,	85-2-00870-4
5/21/85	Motion for Injunction Staying Collection of Taxes Filed For	
	National Can Corporation,	84-2-01900-7
	Xerox Corporation,	84-2-01916-3
	Kalama Chemical, Inc.	84-2-01891-4

Date	*Entry*	*Case Number*
5/21/85	Motion and Order Making Judgment Rendered in Test Cases Applicable to all Appellants	84-2-01900-7 84-2-01916-3 84-2-01891-4
5/22/85	Complaint for Refund of Taxes Filed For Scott Paper Company	85-2-00879-8
5/22/85	Second Amended Complaint For Refund of Taxes Filed For Xerox Corporation	84-2-01916-3
5/22/85	Motion for Summary Judgment Filed For National Can Corporation, Xerox Corporation, Kalama Chemical, Inc.	84-2-01900-7 84-2-01916-3 84-2-01891-4
5/28/85	Complaints for Refund of Taxes Filed For Mars, Inc., Kal Kan Foods, Inc., and Uncle Ben's, Inc., W. R. Grace & Co., Murray Pacific Corp.	85-2-00919-1 85-2-00920-4 85-2-00921-2
6/24/85	Amended Complaints for Refund of Taxes Filed For Alaskan Copper Companies, Inc., The Firestone Tire & Rubber Co., General Electric Co., Honeywell Inc., Reynolds Metals Corporation, Square D Company,	85-2-00863-1 85-2-00864-0 85-2-00865-8 85-2-00866-6 85-2-00867-4 85-2-00868-2

Date	*Entry*	*Case Number*
6/24/85	E. R. Squibb & Sons, Inc., Spacelabs, Inc., Charles of the Ritz Group, Ltd., and Edward Weck & Company, Inc.,	85-2-00869-1
	Alpac Corporation,	85-2-00870-4
	Scott Paper Company,	85-2-00879-8
	Mars, Inc., Kal Kan Foods, Inc. and Uncle Ben's, Inc.,	85-2-00919-1
	W. R. Grace & Co.,	85-2-00920-4
	Murray Pacific Corp.	85-2-00921-2
6/24/85	Memorandum Opinion Filed in National Can Corporation,	84-2-01900-7
	Xerox Corporation,	84-2-01916-3
	Kalama Chemical, Inc.	84-2-01891-4
7/10/85	Motions and Cross Motions for Summary Judgment Filed in National Can Corporation,	84-2-01900-7
	Xerox Corporation,	84-2-01916-3
	Kalama Chemical, Inc.,	84-2-01891-4
	Alaskan Copper Companies, Inc.,	85-2-00863-1
	The Firestone Tire & Rubber Co.,	85-2-00864-0
	General Electric Co.,	85-2-00865-8
	Honeywell Inc.,	85-2-00866-6
	Reynolds Metals Corporation,	85-2-00867-4
	Square D Company,	85-2-00868-2
	E. R. Squibb & Sons, Inc., Spacelabs, Inc., Charles of the Ritz Group, Ltd., and Edward Weck & Company, Inc.,	85-2-00869-1
	Alpac Corporation,	85-2-00870-4
	Scott Paper Company,	85-2-00879-8
	Mars, Inc., Kal Kan Foods, Inc., and Uncle Ben's, Inc.,	85-2-00919-1
	W. R. Grace & Co.,	85-2-00920-4
	Murray Pacific Corp.,	85-2-00921-2
	International Paper Company,	84-2-01888-4
	Chrysler Corporation,	84-2-01889-2
	ASC Pacific, Inc.,	84-2-01890-6

Date	*Entry*	*Case Number*
7/10/85	Korry Electronics Co.,	84-2-01892-2
	Data I/O Corporation,	84-2-01893-1
	R.A. Hanson Co., Inc. & RAHCO, Inc.,	84-2-01894-9
	Ford Motor Company,	84-2-01895-7
	Western Steel Casting Company,	84-2-01896-5
	AMF, Inc., AMF Voit, Inc., Ben Hogan Co., Paragon Electric Co., Inc., and AMF Head Sportswear, Inc.,	84-2-01898-1
	Westinghouse Electric Corporation,	84-2-01899-0
	Basic American Foods, Inc.,	84-2-01901-5
	Peter Pan Seafoods, Inc.,	84-2-01902-3
	Lone Star Industries,	84-2-01903-1
	Cominco American Inc. & Cominco Electronic Materials, Inc.,	84-2-01904-0
	Fentron Building Products Co.,	84-2-01907-4
	Heath Tecna Aerospace Co.,	84-2-01908-2
	Clark Equipment Company,	84-2-01909-1
	Advanced Technology Laboratories, Inc.,	84-2-01911-2
	Cummins Engine Company, Inc.,	84-2-01912-1
	Miller Brewing Company,	84-2-01913-9
	American Cyanamid Company, Shulton, Inc. and Jacqueline Cochran, Inc.,	84-2-01914-7
	General Brewing Company,	84-2-01915-5
	Longview Fibre Company,	84-2-01917-1
	Pabst Brewing Company and Olympia Brewing Company,	84-2-01918-0
	Quinton Instrument Company,	84-2-01919-8
	E. M. Matson, Jr.,	84-2-01920-1
	A. H. Robins Company,	84-2-01921-0
	Armstrong World Industries, Inc. and Thomasville Furniture Industries, Inc.,	84-2-01922-8

Date	*Entry*	*Case Number*
7/10/85	G. Heileman Brewing Co., Inc. and Rainier Brewing Company,	84-2-01923-6
	Allis-Chalmers Corporation,	84-2-01924-4
	North Pacific Processors, Inc., Alaska Pacific Seafoods, and Kenai Salmon Packing Co.,	84-2-01925-2
	Bethlehem Steel Corporation,	84-2-01926-1
	U.S. Oil & Refining Co.,	84-2-01927-9
	Noel Canning Corporation,	84-2-01928-7
	Trident Seafoods Corporation,	84-2-01929-5
	Foseco, Inc.,	84-2-01930-9
	Mattel, Inc.,	84-2-01931-7
	Welch Foods, Inc.,	84-2-01932-5
7/19/85	Stipulation and Order Consolidating all of Appellants' Actions Into *National Can Corporation vs. State of Washington Department of Revenue,* Cause No. 84-2-01900-7	All of the Above
7/19/85	First Stipulation Re: Exhibits Pertaining to Washington State Budget and Revenues, Including Exhibits 1-31 Filed	84-2-01900-7
7/19/85	Exhibit 32: Confidential Report in Sealed Envelope Admitted for Limited Purpose	84-2-01891-4
7/19/85	Summary Judgment Entered Against National Can Corporation and All Other Appellants	All of the Above
8/ 5/85	Notice of Appeal to Washington Supreme Court Filed	84-2-01900-7

Date	*Entry*	*Case Number*
3/28/86	Mandate Received	84-2-01900-7
5/22/86	Notice of Appeal to the Supreme Court of the United States Filed	84-2-01900-7

DOCKET ENTRIES OF
WASHINGTON SUPREME COURT

8/ 5/85	Notice of Appeal to Washington Supreme Court Filed	51910-2
8/ 7/85	Statement of Grounds For Direct Review Filed	51910-2
9/30/85	Motion for Accelerated Review Filed	51910-2
10/ 4/85	Notation Order Granting Accelerated Direct Review, Combining *Tyler Pipe Industries, Inc. vs. State of Washington Department of Revenue*, No. 51110-1 With *National Can* for Purposes of Oral Argument and Granting *National Can* ⅔ of Oral Argument Time	51910-2
3/ 6/86	Opinion Filed	51910-2
3/27/86	Mandate Filed	51910-2
5/22/86	Notice of Appeal to the Supreme Court of the United States Filed	51910-2

KALAMA CHEMICAL, INC., STIPULATION OF FACTS

[Filed May 1, 1985]

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR THURSTON COUNTY

KALAMA CHEMICAL, INC.,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01891-4

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. Kalama Chemical, Inc. ("Kalama" or "the company"), is a Washington corporation, having its corporate office in Seattle, Washington.

2. Kalama manufactures and sells chemical products. Its products are sold primarily outside the State of Washington and in the export market.

3. Kalama operates manufacturing facilities in Kalama, Washington, and Garfield, New Jersey. Kalama maintains stocks of its goods (including those it manufactures in Washington) in Illinois, California, New Jersey, Indiana, New York, and Texas (as well as Washington). The original cost of Kalama's property in Washington is $23,762,321. The original cost of its property every-

where (including Washington) is $30,039,160. (Both costs are as of Kalama's fiscal year ended June 30, 1984, and include leased property, based on eight times the net annual rental rate.)

4. In order to sell Washington-manufactured products outside Washington, Kalama employs sales representatives and others whose activities outside Washington contribute to the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price Kalama received for those products.

5. Kalama employs a total of approximately 175 people. Approximately 95 of them are employed in Washington and 80 are employed in other states. The company's Washington payroll was $3,297,524 for its fiscal year ended June 30, 1984. Its total payroll everywhere was $6,635,515 for the same period.

6. Kalama's employees in Washington include management/administrative personnel, plant workers, engineers, office personnel, and others whose activities in Washington contribute to the value of the products that are manufactured in this state. The cost of their activities is included in the price Kalama receives for those products.

7. As reported on its returns filed with the Washington State Department of Revenue for business and occupation tax purposes, Kalama's annual out-of-state sales of products manufactured in Washington ranged from $23,981,057 to $29,693,132 during the period January 1, 1980, through December 31, 1984. Kalama paid manufacturing business and occupation taxes to Washington of $495,612.59 (including interest) during that period.

8. Kalama's total sales everywhere were $46,779,613 during its fiscal year ended June 30, 1984. Its sales in Washington were $2,580,766 during the same period.

9. Kalama pays taxes to other jurisdictions on income derived in those locations from the sale of products manufactured in Washington. Kalama pays income tax to the states of California, New Jersey, and Illinois ("the Market States") on the income Kalama derives from the sale in those states of products manufactured in Washington. The income taxed by the Market States is Kalama's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in Washington and sold in the Market States), minus certain deductions permitted by statute, and multiplied by an apportionment factor. The taxes imposed by the Market States are apportioned on the basis of a three-factor formula that compares Kalama's property, payroll, and sales in those states to its property, payroll, and sales everywhere. For goods Kalama manufactures in Washington and sells in one of the Market States, Kalama's gross proceeds from those goods are attributed to the Market State and are, therefore, included in the numerator of its "sales" or "receipts" factor. Kalama's gross proceed from the same goods are also used by Washington as the measure of its manufacturing tax on Kalama.

10. Kalama pays franchise tax to the State of Texas. The basis of the franchise tax is the corporation's "taxable capital" allocated to Texas. The "taxable capital" of a corporation is its stated capital (*e.g.*, the par value of all shares issued having a par value) and its surplus. The "taxable capital" of a corporation is allocated to Texas

through an apportionment formula. Under the formula "taxable capital" is multiplied by a fraction, the numerator of which is the corporation's gross receipts from business done in Texas and the denominator of which is gross receipts from its entire business. Gross receipts includes the gross proceeds from sales delivered in Texas, services performed in Texas and other business done in Texas. For goods Kalama manufactures in Washington and sells in Texas, Kalama's gross proceeds from those goods are attributed to Texas and are, therefore, included in the numerator of Texas' apportionment formula as receipts from business done in Texas. Washington uses those same gross proceeds as the measure of its manufacturing tax on Kalama.

11. Kalama borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. Kalama's experience with respect to the cost of borrowing money and its return on invested money reflected the prevailing market rates of interest.

12. No claims for refund are made by Kalama in this action on behalf of any corporation that is or has been a subsidiary or affiliate of Kalama. This stipulation is not a waiver of any such claims and is without prejudice to any right any past or present Kalama subsidiary or affiliated corporation may have to seek such relief in a separate action.

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorneys for Defendant

BOGLE & GATES

/s/ D. Michael Young
D. Michael Young
Attorneys for Plaintiff

NATIONAL CAN CORPORATION STIPULATION OF FACTS

[Filed May 17, 1985]

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NATIONAL CAN CORPORATION,

Plaintiff,

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01900-7

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. National Can Corporation ("NCC") is a Delaware corporation, having its principal office in Chicago, Illinois.

2. NCC manufactures and sells packaging products. NCC's products are sold throughout the world.

3. NCC operates manufacturing facilities in 22 states, including Washington. NCC maintains offices in 25 states, including Washington. Exhibit A, which lists NCC's offices and facilities throughout the United States, is incorporated by reference as a part of this stipulation. The original cost of NCC's property in Washington was ap-

proximately $31.9 million. The original cost of its property everywhere (including Washington) was $899 million. (Both costs are as of 1983 and include leased property, based on eight times the net annual rental rate.)

4. In order to sell NCC packaging products in Washington and elsewhere, NCC maintains plants, offices, warehouses and other facilities in states other than Washington, and employs many people outside the State of Washington, including factory workers, engineers, scientists, laboratory technicians, accountants, lawyers, office personnel, warehouse personnel, industrial and public relations personnel, computer programmers, data processors, and other employees whose activities outside Washington contribute to the value of the products that are sold in Washington. The cost of their activities is included in the price NCC receives for those products.

5. In order to sell its products outside Washington, (including the products it manufactures in Washington), NCC maintains offices, warehouses, and other facilities in states other than Washington, and employs many people outside the State of Washington, including sales representatives, engineers, scientists, laboratory technicians, accountants, lawyers, office personnel, warehouse personnel, industrial and public relations personnel, computer programmers, data processors, and other employees whose activities outside Washington contribute to the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price NCC receives for those products.

6. NCC employs approximately 10,400 people worldwide. Approximately 240 of NCC's employees are in

Washington. In 1983, NCC's Washington payroll was approximately $7.6 million. Its total payroll everywhere was approximately $238 million.

7. In order to sell NCC packaging products in Washington, NCC maintains a sales office and employs 7 sales and office personnel in Washington whose activities contribute to the value of products sold in this state. The cost of their activities is included in the price NCC receives for those products.

8. In order to manufacture NCC products in Washington, NCC maintains two plants and employs factory workers, engineers, office personnel and others in Washington whose activities contribute to the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price NCC receives for those products.

9. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, NCC's annual Washington sales of products manufactured outside Washington ranged from $19.9 million to $32 million during the period January 1, 1980, through December 31, 1984. NCC paid wholesaling taxes to Washington of $606,863.26 on such sales during that period.

10. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, NCC's annual out-of-state sales of products manufactured in Washington ranged from $11.3 million to $18.7 million during the period January 1, 1980, through December 31, 1984. NCC paid manufacturing taxes to Washington of $372,843.78 during that period.

11. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, NCC's gross receipts from goods both manufactured and sold in Washington ranged from $71.4 million to $78.5 million during the period January 1, 1980, through December 31, 1984. NCC paid wholesaling taxes to Washington of approximately $1,800,000 on such gross receipts during that period.

12. Between January 1, 1980 and December 31, 1984, NCC paid approximately $2,800,000 in Washington State business and occupation taxes. In this action, NCC is seeking a refund of approximately $980,000 plus reasonable interest.

13. NCC's 1983 total sales everywhere were approximately $1.552 billion. Its 1983 sales in Washington were approximately $110 million.

14. NCC pays taxes to other jurisdictions on income derived in those locations from the sale of products manufactured in Washington. NCC pays taxes to the states of Arizona, California, Georgia, Illinois, Minnesota, Oregon and Wisconsin ("the Market States") on the income NCC derives from the sale in those statesof [sic] products manufactured in Washington. The income taxed by the Market States is NCC's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in Washington and sold in the Market States), minus certain deductions permitted by statute, and multiplied by an apportionment factor. The state income taxes imposed by the Market States are apportioned on the basis of a three-factor

formula that compares NCC's property, payroll, and sales in those states to its property, payroll, and sales everwhere. [sic] For goods NCC manufactures in Washington and sells in one of the Market States, NCC's gross proceeds from those goods are attributed to the Market State and are, therefore, included in the numerator of its "sales" or "receipts" factor. NCC's gross proceeds from the same goods are also used by Washington as the measure of its manufacturing tax on NCC.

15. NCC pays taxes to other jurisdictions on income derived from its sales of products in Washington. NCC pays taxes to the State of California on the income NCC derives from manufacturing goods in California and selling them in Washington. NCC's gross proceeds from the same goods are also used by Washington as the measure of its wholesaling tax on NCC. The income taxed by California is NCC's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in that state and sold in Washington), minus certain deductions permitted by statute, and multiplied by an apportionment factor. California's tax is apportioned on the basis of a three-factor formula that compares NCC's property, payroll, and sales in California to its property, payroll, and sales everywhere. For goods NCC manufactures in California and sells in Washington, the property and payroll of NCC's plants that produce those goods and of its offices in the manufacturing state are included in the numerator of that state's property and payroll factors, respectively.

16. Washington is the only state in which NCC is subjected to a gross receipts tax measured by 100% of

the gross receipts from the sale of products manufactured in and sold outside the taxing state.

17. Between 1980 and 1984, NCC manufactured some articles in Washington for its own use. The total value of products so manufactured does not exceed $10,000. NCC paid manufacturing B&O tax to Washington on that activity, and such tax is not included in the amount of the refund sought in this action.

18. NCC borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. NCC's cost of borrowing money and its return on invested money were interest in the range of ½% to 2½% over the prevailing prime lending rate.

19. No claims for refunds are made by NCC in this action on behalf of any corporation that is or has been a subsidiary of [sic] affiliate of NCC. This stipulation is not a waiver of any such claims and is without prejudice to any right any past or present NCC subsidiary or affiliated corporation may have to seek such relief in a separate action.

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorneys for Defendant

BOGLE & GATES

/s/ D. Michael Young
D. Michael Young
Attorneys for Plaintiff

STIPULATION OF FACTS
EXHIBIT A

NATIONAL CAN CORPORATION
SUMMARY OF REAL PROPERTY LOCATIONS IN THE U.S.

REVISED 03/21/84

ST	ZIP	CTY	CITY	STREET ADDRESS	DIVISION	FACILITY
AL	38215	—	Birmingham	124 Carbon Road, P.O. Box 94067	MCD	PLANT
AZ	85031	—	Phoenix	211 N. 51st Avenue	MCD	PLANT
CA	94010	—	Burlingame	P.O. Box 1699, 1657 Rollins Road	MCD	PLANT
CA	94010	—	Burlingame	1657 Rollins Road	MCD	SALES
CA	94010	—	Burlingame	1657 Rollins Road	CEQS	OFFICE
CA	90701	—	Cerritos	11544 South Street, P.O. Box 8000	MCD	SALES
CA	91744	—	City of Industry	437 North Baldwin Park Boulevard	CLOSURE	PLANT
CA	90023	—	Los Angeles	2615 South Bonnie Beach Place	MCD	PLANT
CA	90023	—	Los Angeles	4212 East 26th Street	MCD	PLANT
CA	90040	—	Maywood	4855 East 52nd Place	GLASS	PLANT
CA	95351	—	Modesto	430 Doherty Avenue	MCD	PLANT
CA	94577	—	San Leandro	2050 Williams Street	MCD	PLANT
CT	06810	—	Danbury	Great Pasture Road	MCD	PLANT
CT	06801	—	Danbury	Old Ridgebury Road, P.O. Box 160	PLATICS	SALES
CT	06801	—	Danbury	Old Ridgebury Road, P.O. Box 160	PLATICS	PLANT
FL	32205	—	Jacksonville	3331 West 12th Street	MCD	PLANT
GA	30345	—	Atlanta	1760 Century Circle	MCD	SALES

IL	60638	—	Bedford Park	7300 South Narragansett Avenue	CLOSURE PLANT
IL	60638	—	Bedford Park	7420 South Meade Avenue	PLATICS PLANT
IL	60651	—	Chicago	1031 North Cicero Avenue	CLOSURE PLANT
IL	60609	—	Chicago	1101 West 43rd Street	MCD PLANT
IL	60638	—	Chicago	5620 West 51st Street	MCD PLANT
IL	60638	—	Chicago	5620 West 51st Street	MCD SALES
IL	60631	—	Chicago	8101 West Higgins Road	EXECUTIVE HDQ
IL	60631	—	Chicago	8101 West Higgins Road	MCD SALES
IL	60631	—	Chicago	8101 West Higgins Road	PLATICS HDQ
IL	60016	—	Des Plaines	1000 East Northwest Highway	MCD PLANT
IL	60016	—	Des Plaines	1000 East Northwest Highway	CENG OFFICE
IL	60007	—	Elk Grove Village	2500 Lively Boulevard	MCD PLANT
IL	60007	—	Elk Grove Village	2520 Lively Boulevard	MCD ART
IL	60143	—	Itasca	751 North Hilltop Avenue	PLATICS PLANT
IL	60143	—	Itasca	750 North Hilltop Avenue	PLATICS SALES
IL	61111	—	Loves Park	5800 Industrial Avenue	MCD PLANT
IL	60521	—	Oaksbrook	1211 West 22nd Street	MCD SALES
IL	60068	—	Park Ridge	400 West Higgins Road	GLASS SALES
IL	61109	—	Rockford	627 Grable Street	CEQS PLANT
IN	47705	—	Evansville	2201 West Harvland Street	CLOSURE PLANT
IN	46404	—	Oary	North Bridge Street	MCD WAREHOUSE
IN	46350	—	La Porte	300 North Fail Road	MCD PLANT
IN	46952	—	Marion	P.O. Box 249	GLASS PLANT
IN	46952	—	Marion	P.O. Box 249, East Charles Street	EXECUTIVE HDQ
IN	46390	—	Wanatah	US Highway 30	MCD PLANT

MA	01757	—	Milford	P.O. Box 398, National Avenue	GLASS	PLANT
MA	02162	—	Newton Lower Falls	2345 Washington Street	MCD	SALES
MA	02162	—	Newton Lower Falls	2345 Washington Street	GLASS	SALES
MD	21207	—	Baltimore	7133 Rutherford Road	MCD	SALES
MD	21230	—	Baltimore	2147 Wicohico	GLASS	WAREHOUSE
MD	21093	—	Baltimore	10 Berard Avenue	GLASS	SALES
MD	21219	—	Sparrows Point	2010 Reservoir Road	MCD	PLANT
MD	21219	—	Sparrows Point	2010 Reservoir Road	CEQS	OFFICE
MI	48084	—	Troy	3221 West Big Beaver Road	GLASS	SALES
MN	55107	—	St. Paul	139 Eva Street	MCD	PLANT
MN	55107	—	St. Paul	139 Eva Street	CEQS	OFFICE
MN	55113	—	St. Paul	1805 W. County Road C	MCD	PLANT
MN	55114	—	St. Paul	2085 Ellis Avenue	PLATICS	PLANT
MN	55110	—	White Bear Lake	3564 Rolling View Drive	MCD	SALES
MO	63105	—	Clayton	135 North Meramec Avenue	GLASS	SALES
MO	63105	—	Clayton	222 South Meramec Avenue	MCD	SALES
MO	63105	—	Clayton	222 South Meramec Avenue	CEQS	OFFICE
MO	63070	—	Pevely	P.O. Box 615, Hwy. 61 & 67	GLASS	PLANT
MO	63132	—	St. Louis	10777 Baur Boulevard	PLATICS	PLANT
MS	39567	—	Pascagoula	3202 Denny Avenue	MCD	PLANT
NC	28209	—	Charlotte	1515 Mockingbird Lane –	GLASS	SALES
NC	27893	—	Wilson	P.O. Box 1757, 2200 Firestone Parkway	GLASS	PLANT

NJ	07066	—	Clark	67 Walnut Avenue	CLOSURE	PLANT
NJ	07066	—	Clark	67 Walnut Avenue	MCD	SALES
NJ	08817	—	Edison	135 National Road	MCD	PLANT
NJ	08332	—	Millville	P.O. Box 150 South 2nd St.	GLASS	PLANT
NJ	08854	—	Piscataway	South Randolphville Rd at Rt. 287	MCD	PLANT
NY	14618	—	Rochester	1467 Monroe Avenue	GLASS	SALES
NY	10607	—	White Plaines	297 Knollwood Rd.	GLASS	SALES
OH	43502	—	Archbold	R.R. #3, Box 9B	MCD	PLANT
OH	45246	—	Cincinnati	#7 Triangle Park Drive	GLASS	SALES
OH	43227	—	Columbus	6100 Channingway Blvd.	MCD	SALES
OH	43302	—	Marion	1240 West Center Street	MCD	PLANT
OH	43207	—	Obetz	2120 Buzick Drive	MCD	PLANT
OH	44481	—	Warren	Griswold Street Exit	MCD	PLANT
OK	73179	—	Oklahoma City	3400 South Council Road	MCD	PLANT
OK	73107	—	Oklahoma City	3810 Northwest 3rd Street	PLATICS	PLANT
PA	18051	—	Fogelsville	100 National Drive	MCD	PLANT
PA	17331	—	Hanover	RD H3 Box 22	MCD	PLANT
PA	16301	—	Oil City (Closed)	P.O. Box 334, Rouseville Rd.	GLASS	PLANT
PA	15235	—	Pittsburgh	201 Penn Center Blvd., Office 407	GLASS	SALES
PA	19462	—	Plymouth Meeting	661 West Germantown Pike	GLASS	SALES
PA	19482	—	Valley Forge	P.O. Box 964	MCD	SALES
SC	29010	—	Bishopville	609 Cougar Street	MCD	PLANT

TN	38017	— Collierville	110 South Byhallia Road	MCD	PLANT
TN	38119	— Memphis	1255 Lynfield Road	MCD	SALES
TX	76011	— Arlington	2205 East Randol Hill Road	MCD	SALES
TX	76140	— Fort Worth	8800 South Freeway	MCD	PLANT
TX	77029	— Houston	8501 East Freeway	MCD	PLANT
TX	77339	— Kingwood	2218 North Park, Suite K	MCD	SALES
TX	75165	— Waxahachie	P.O. Box 677, I Hwy. 35-E at Hwy. 287	GLASS	PLANT
WA	98031	— Kent	1220 North Second Avenue	MCD	PLANT
WA	98055	— Renton	15 South Grady Way	MCD	SALES
WA	98660	— Vancouver	2601 N.W. Lower River Road	MCD	PLANT
WI	53105	— Burlington	P.O. Box 120, South McHenery St.	PLANT	SALES
WI	54306	— Green Bay	P.O. Box 2386	MCD	PLANT
WI	53222	— Wauwatosa	10721 West Capitol Drive	GLASS	SALES

XEROX CORPORATION STIPULATION OF FACTS

[Filed May 17, 1985]

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

XEROX CORPORATION,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE
Defendant.

NO. 84-2-01916-3

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. Xerox Corporation ("Xerox") is a New York corporation, having its corporate office in Stamford, Connecticut.

2. Xerox manufactures and sells office equipment. Xerox products are sold throughout the world. None of this equipment is manufactured in Washington State.

3. Xerox operates manufacturing facilities in New York, California, and Texas. Xerox maintains offices in 48 states, including Washington.

4. Xerox operates regional distribution centers. Each distribution center handles specific and limited product lines. For example, Xerox duplicating equipment sold in Washington is distributed through the Santa Fe Springs, California, regional distribution center. Xerox typewriters and other nonduplicating office equipment sold in

Washington are distributed through the Dallas, Texas, regional distribution center. Xerox office supplies sold in Washington are distributed through the Compton, California, distribution center. Xerox does not operate a distribution center in Washington.

5. Xerox's administrative functions are performed in regional headquarters. For example, Xerox sales representatives selling in Washington are responsible to a regional sales office in Walnut Creek, California. Xerox's West Coast tax operations are headquartered in Santa Ana, California. The Santa Ana office has responsibility for tax planning in 17 western states, including Washington. Credit collection policy, advertising and marketing strategy, and salesmen compensation plans are developed and administered at Xerox's Rochester, New York, office. Central administrative functions are not performed in Washington.

6. The original cost of Xerox's property in Washington was $25,919,898. The original cost of its property everywhere (including Washington) was $4,544,650,836. (Both costs are as of 1983 and include leased property, based on eight times the net annual rental rate.)

7. In order to sell Xerox-manufactured products in Washington and elsewhere, Xerox employs many people outside the state of Washington, including factory workers, engineers, architects, scientists, laboratory technicians, accountants, lawyers, office personnel, warehouse personnel, computer programmers, data processors, and other employees. Their activities outside Washington contribute to the value of the products that are sold in Washington. The cost of their activities is included in the price Xerox receives for those products.

8. Xerox employs approximately 55,000 people. Approximately 460 of Xerox's employees are in Washington and 54,540 are in other states. In 1983, Xerox's Washington payroll was $13,875,256. Its total payroll everywhere in 1983 was $1,751,280,789.

9. In order to sell Xerox-manufactured products in Washington, Xerox maintains sales offices, services offices, and a products demonstration center in Washington, and employs sales representatives, service technicians, clerical/administrative personnel, and others in Washington whose activities contribute to the value of products sold in this state. The cost of their activities is included in the price Xerox receives for those products.

10. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, Xerox's annual Washington sales of products manufactured outside Washington ranged from $64.4 million to $75.7 million during the period January 1, 1980, through December 31, 1984. Xerox paid retailing and wholesaling taxes to Washington of $1,537,075.68 during that period.

11. Xerox's 1983 total sales everywhere were $4,963,342,857. Its 1983 sales in Washington were $67,569,385.

12. Xerox pays taxes to other jurisdictions on income derived from its sale of products in Washington. Xerox pays taxes to the states of California and New York on the income Xerox derives from manufacturing goods in those states and selling them in Washington. Xerox's gross proceeds from the same goods are also used by Washington as the measure of its retailing and wholesaling taxes on Xerox. The income taxed by California and New York is Xerox's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds

from goods manufactured in those states and sold in Washington), minus certain deductions permitted by statute, and multiplied by an apportionment factor. California's and New York's taxes are apportioned on the basis of a three-factor formula that compares Xerox's property, payroll, and sales in those states to its property, payroll, and sales everywhere. For goods Xerox manufactures in California or New York and sells in Washington, the property and payroll of Xerox's plant that produces those goods, its distribution centers, and its corporate and/or regional headquarters located in the manufacturing state are included in the numerator of that state's property and payroll factors, respectively.

13. Xerox borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. Xerox's experience with respect to the cost of borrowing money and its return on invested money reflected the prevailing market rates of interest.

14. No claims for refund are made by Xerox in this action on behalf of any corporation that is or has been a subsidiary or affiliate of Xerox. This stipulation is not a waiver of any such claims and is without prejudice to any right any past or present Xerox subsidiary or affiliate corporation may have to seek such relief in a separate action.

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorneys for Defendant

BOGLE & GATES

/s/ D. Michael Young
D. Michael Young
Attorneys for Plaintiff

AFFIDAVIT OF GARY O'NEIL

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

NO. 84-2-01900-7

NATIONAL CAN CORPORATION,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01916-3

XEROX CORPORATION,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01891-4

KALAMA CHEMICAL, INC.,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

AFFIDAVIT OF GARY O'NEIL

KENNETH O. EIKENBERRY,
ATTORNEY GENERAL

William B. Collins
Assistant Attorney General
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STATE OF WASHINGTON)
) ss.
County of Thurston)

GARY O'NEIL, being duly sworn on oath, says:

1. *IDENTIFICATION.*

I am the Assistant Director of the Washington State Department of Revenue for Research and Information and have acted in that capacity since 1977.

2. *RESEARCH AND INFORMATION DIVISION.*

The duties of the Research and Information Division include the compilation of statistical information with respect to the tax laws of the state and their administration. Prior to July 1, 1984 the Research and Information Division was charged with the responsibility of making revenue forecasts. After July 1, 1984 this became the responsibility of the Economic and Revenue Forecast Council. The Research and Information Division continues to supply technical assistance to the Council. The Research and Information Division is also responsible for preparing Fiscal Notes for the legislature describing the fiscal impact of proposed legislation.

3. *FIRST PURPOSE OF AFFIDAVIT PARAGRAPHS 3-9.5.*

The first purpose of this affidavit is to estimate the potential tax refund liability to all affected taxpayers that would be incurred by the State of Washington for the years 1980 through 1984 in the event of a decision in favor of the taxpayer in this action and in the two related cases before this Court for hearing. In the development of the estimates set forth in this affidavit I have been assisted

by counsel assigned to the Department as well as by employees of the Department in the Research and Information Division, the Excise Tax Division, and the Information Systems Section of the Department of Revenue.

4. *SEPARATE ESTIMATES FOR MANUFACTURING AND SELLING B&O TAX.*

I have been informed by counsel for the Department of Revenue in this action that claims in litigation allege that Washington's extracting and manufacturing B&O tax on Washington's extractors and manufacturers selling products so extracted or manufactured in interstate commerce is unconstitutional. Other claims in litigation allege that Washington's selling (wholesaling and retailing) B&O tax, imposed on those manufacturing products outside of Washington and selling them within this state, is unconstitutiional.

The estimates in this affidavit are separately set forth for the manufacturing B&O tax and the selling B&O tax, and are based on the information and assumptions more fully explained below.

5. *INITIAL REVENUE ESTIMATES AND PURPOSE.*

After the decision of the U.S. Supreme Court in *Armco, Inc. v. Hardesty*, — U.S. —, 81 L.Ed.2d 540, 104 S.Ct. 2620 (1984) the Department of Revenue was asked to determine the extent of potential liability to the State of Washington if (a) Washington's manufacturing B&O tax was invalidated as applied to Washington manufacturers selling products in interstate and foreign commerce and (b) Washington's selling B&O tax was invalidated

as applied to out-of-state manufacturers selling products in the State of Washington.

These estimates of tax refund liabilities were set forth by the State of Washington in its Preliminary Official Statement, dated January 25, 1985, accompanying the issuance of the State of Washington general obligation refunding bonds (Series 1985AO).

Revised estimates of tax refund liability are set forth in paragraphs 6, 7 and 8 below, with accompanying explanations for derivation of the estimates.

6. *POTENTIAL REFUNDS TO CURRENT CLAIMANTS.*

6.1 *Washington Manufacturers—Actual Claims*

	1980	1981	1982	1983	1984	Total
6.1(A) Amounts claimed by taxpayers filing for 1980 only (adjusted and subject to the assumptions as described in subpar. 6.3)	$ 10,908,841	—	—	—	—	$ 10,908,841
6.1(B) Amounts claimed by taxpayers filing for 1980 and subsequent years (adjusted and subject to the assumptions as described in subpar. 6.3)	8,598,942	9,288,740	9,559,888	11,961,624	16,012,846	55,422,040

6.2 *Out-of-State Manufacturers—Actual Claims*

6.2(A) Amounts claimed by taxpayers filing for 1980 only (adjusted and subject to the assumptions as						

described in subpar. 6.3)	685,597	—	—	—	—	685,597
6.2(B) Amounts claimed by taxpayers filing for 1980 and subsequent years (adjusted and subject to the assumptions as described in subpar. 6.3)	4,532,312	4,637,124	4,838,434	7,623,175	7,764,462	29,395,507
						96,411,985
Interest (computed through Dec. 31, 1985)						8,564,214
CURRENT TAX REFUND CLAIMS						$104,976,199

6.3 *Assumptions Underlying 6.1 and 6.2.*

6.3(A) A review of claims filed by persons seeking refunds, either administratively with the Department of Revenue or in litigation demonstrated a number of discrepancies between the amounts claimed and taxes paid during the period(s) for which refund was sought with regard to both Washington manufacturers and extracting B&O tax and selling B&O tax. Some claims were less than the amount of applicable taxes reported to the Department. The great majority of discrepancies, however, in number and amount, represented claims in excess of the amounts of taxes reported. Analysis of the discrepancies suggests that such differences may be attributable to (a) careless or deliberate overstatement of claims at year-end to avoid understatement that would prevent subsequent refund for the full amount to which a taxpayer might be legally entitled, (b) failure to report the amount on the proper line of the Combined Excise Tax Return (e.g., manufacturing tax reported on wholesaling line of return), and (c) failure to reduce amounts of taxes shown to have been paid on the manufacturing, wholesaling or retailing reporting lines by credits taken for inventory taxes paid or pollution equipment installed.

6.3(B) These figures also assume the right to refund of the amounts so claimed is attributable to the issues in this litigation and not to other causes.

7. *PROJECTED REFUNDS TO CURRENT CLAIMANTS* (including those claiming for 1980 only or 1980 and one or more, but not all of years at issue).

7.1 *Washington Manufacturers.*

	1981	1982	1983	1984	Total
Amounts subject to claims by taxpayers who have currently filed refund claims. Potential claims for subsequent years are based on amounts of taxes adjusted as described in subpar. 7.3)	9,407,102	8,901,827	10,644,297	16,011,579	44,964,805

7.2 *Out-of-State Manufacturers.*

Amounts subject to claims by taxpayers who have currently filed refund claims. Potential claims for subsequent years are based on amounts of taxes actually paid (and adjusted as described in subpar. 7.3)	631,109	585,940	760,293	682,353	2,659,695
					$47,624,500
Interest Computed to Dec. 31, 1985					3,243,577
TOTAL REFUND CLAIM POTENTIAL					$50,868,077

7.3 *Adjustment and Assumptions Underlying 7.1 and 7.2.*

7.3(A) "Amounts of taxes actually paid" include reductions for inventory tax credits and pollution equipment credits.

7.3(B) Taxpayers who have filed either administrative claims with the Department of Revenue or claims in litigation with respect to the year 1980 will amend existing claims to add claims for the subsequent years 1981-84.

8. *ESTIMATES OF TAX REFUNDS FOR TAXPAYERS NOT CURRENTLY CLAIMING REFUND.*

8.1 *Washington Manufacturers*

	1981	1982	1983	1984	Total
Amounts subject to tax refund claim by taxpayers who have not yet filed claims for refund (as determined by methodology set forth in sub-par. 8.4)	26,504,158	23,238,285	36,894,079	49,775,578	$136,412,097

8.2 *Out-of-State Manufacturers*

	1981	1982	1983	1984	Total
Amounts subject to tax refund claim by taxpayers who have not yet filed claims for refund (as determined by methodology set forth in sub-par. 8.5)	30,431,767	31,975,626	39,616,532	41,253,185	143,277,110
					$279,689,207
Interest Computed to Dec. 31, 1985					19,123,063
TOTAL REFUND CLAIM POTENTIAL					$298,812,270

8.3 *Assumptions Underlying 8.1 and 8.2*

(A) Other taxpayers who have not yet filed tax refund claims for taxable years still open under the statute of limitations will file such claims beginning with the taxable year 1981.

(B) All amounts set forth in tax returns and used in deriving these estimates would be recoverable under the issues in this litigation (this assumption also underlies subpar. 7.1 and 7.2).

(C) For purposes of estimating claims by out-of-state manufacturers, 1983 was used as a representative year. (See subpar. 8.5(C), *infra.*)

8.4 *Methodology for Estimates for Washington Manufacturers*

The Department of Revenue has estimated a potential tax refund liability of Washington manufacturing tax by taking amounts paid for manufacturing B&O tax set forth in the Quarterly Business Review, a publication of the State of Washington. The Quarterly Business Review is a standard report issued by the Research and Information Division of the Department which summarizes manufacturing B&O tax reported to the Department each calendar quarter by individual manufacturers. The Department did not include the Quarterly Business Review figures for extracting B&O tax. Credits for inventory tax and pollution control equipment were then subtracted from these amounts. On the basis of such information, the Department estimated the potential manufacturing B&O tax refund liability for all taxpayers (including those identified in subpar. 6.1 and 7.1) as follows:

1980	$ 40,900,000
1981	45,200,000
1982	41,700,000
1983	59,500,000
1984	81,800,000
	$269,100,000

The amounts set forth in subpar. 6.1 and 7.1 have been subtracted from these amounts to derive the estimates set forth in subpar. 8.1.

8.5 *Methodolgy for Out-of-State Manufacturers*

The Department of Revenue estimated the potential tax refund liability of Washington selling B&O tax on out-of-state manufacturers selling within Washington (including taxpayers identified in subpar. 6.2 and 7.2).

(A) Taxpayers classified as wholesalers doing business in Washington but having a business address outside Washington were identified from a data base maintained by the Information System Section of the Department. Those companies classified as retailers were disregarded.

(B) The list of taxpayers was supplied by the Research and Information Division to the Excise Tax Division which determined which of such taxpayers engaged in actual manufacturing outside of Washington.

(C) The Research and Information Division then determined the total wholesaling and retailing B&O tax paid by this group of taxpayers so identified. To this figure was added the wholesaling and retailing B&O tax paid by taxpayers actually registered with the Department as out-of-state manufacturers. This latter figure was taken from

the Quarterly Business Review. The sum of the two figures for 1983, the last year for which the Department has complete figures, was found to be $53,000,000. This amount was rounded down to $50,000,000, which represents the projected potential refund liability of wholesaling and retailing B&O tax for 1983.

(D) To calculate the wholesaling and retailing B&O tax for 1980, 1981, 1982 and 1984 the Research and Information Division applied a factor to the 1983 base figure of $50,000,000. The factor was the relationship of the actual, entire wholesaling tax reported in 1981 by registered out-of-state manufacturers as shown in the Quarterly Business Review divided by the actual wholesaling tax reported in that publication for 1983. A similar factor was developed for 1980, 1982 and 1984.

(E) On the basis of the foregoing calculations the Department has estimated the potential selling B&O tax refund liability (including taxpayers previously identified in subpar. 6.2 and 7.2) as follows:

1980	$ 33,700,000
1981	35,700,000
1982	37,400,000
1983	48,000,000
1984	49,700,000
	$204,500,000

The amounts derived in this subparagraph (E) are overstated for the reason that (1) a number of taxpayers whose principal places of business are outside of Washington nevertheless maintain manufacturing facilities in Washington from which products are sold within the state;

and (2) no exclusion has been made for amounts paid on selling activities of products *not* manufactured by these taxpayers. The validity of the taxes attributable to such sales is not in issue in this litigation but is reflected in the amounts shown in this subparagraph (E). The portion of such amounts attributable to intrastate sales in Washington cannot be determined without audits of individual taxpayers.

(F) The amounts set forth in subpar. 6.2 and 7.2 have been subtracted from the amounts set forth in (E) above to derive the estimates set forth in subpar. 8.2.

9. *ESTIMATED ACTUAL AND PROJECTED POTENTIAL TAX REFUND LIABILITY.*

9.1 *Washington Manufacturers*

(A)	Actual claims for 1980 and other years (subpar. 6.1)	$ 66,330,881	
(B)	Projected claims by 1980 claimants for subsequent years (subpar. 7.1)	44,964,805	
(C)	Projected claims by potential claimants (subpar. 8.1)	136,412,097	
			$247,707,783

9.2 *Out-of-State Manufacturers*

(A)	Actual claims for 1980 and other years (subpar. 6.2)	30,081,104	
(B)	Projected claims by 1980 claimants for subsequent years (subpar. 7.2)	2,659,695	
(C)	Projected claims by potential claimants (subpar. 8.2)	143,277,110	
			176,017,909
	POTENTIAL CLAIMS (exclusive of interest)		$423,725,692

9.3 *OTHER CALCULATIONS* (Interest Payable on Refunds).

I have been advised by counsel for the Department of Revenue that taxpayers in the three related cases before this Court for hearing have placed in issue the validity of the interest currently paid to taxpayers upon refund of taxes determined to have been overpaid. The calculation of interest on potential tax refunds set forth in paragraphs 6, 7 and 8 below has been made at the existing statutory rate (3%) and computed as if owing from the final day of each calendar year for which a refund might be due.

10. *SECOND PURPOSE OF AFFIDAVIT PARAGRAPHS 10-13.*

Under Washington's business and occupation (B&O) tax as confirmed by counsel assigned to advise the Department, manufacturers in Washington who sell their products at retail or wholesale in Washington pay a B&O tax on the selling activity. RCW 82.04.440 provides an exemption from the manufacturing B&O tax for those who pay tax on their selling activity, except with respect to products manufactured for their own use. The second purpose of this affidavit is to set forth the manufacturing B&O tax such manufacturers would have paid if RCW 82.04.440 did not provide an exemption for tax on the manufacturing activity.

11. *ESTIMATE OF MANUFACTURING TAX ATTRIBUTABLE TO RCW 82.04.440.*

The Department estimates that the manufacturing tax attributable to the exemption in RCW 82.04.440, based on 1983 returns filed by Washington manufacturers selling at the wholesaling and retailing level within the state,

would be approximately $44 million. The manufacturing tax attributable to RCW 82.04.440 for first six months of 1984 $17 million or $34 million on an annualized basis.

12. *EVALUATION OF MANUFACTURING TAX ESTIMATES.*

The amounts set forth in paragraph 11 are overstated for the same reason taxes are overstated in subparagraph 8.5(E) (p. 11). The information utilized by the Department in its estimates does not identify those Washington manufacturers with manufacturing facilities outside the state which sell products from those locations in Washington. Such sales would be reported on the wholesaling or retailing line of the Combined Excise Tax return, which has been used as the measure of the tax payable shown in paragraph 5. The identification of such out-of-state facilities and the sales in Washington attributable to those locations would require individual audit of the taxpayers; such information is not otherwise available to the Department.

13. *METHODOLOGY FOR ESTIMATING MANUFACTURING TAX IN PARAGRAPH 11.*

These estimates of the manufacturing B&O tax set forth in the preceding paragraph have been derived by the Research and Information Division under my instruction and supervision in the following manner:

(A) Washington manufacturers registered with the Department of Revenue under the major manufacturing groups, set forth in the Standard Industrial Classification ("SIC") Manual, were first identified. A copy of such major group listing is attached as *Schedule A* to this affidavit. Excepted from the Department's computation was major group 21 "Tobacco Manufacturers", there being no such registered taxpayers in this state.

(B) The data base maintained by the Department for taxpayers classified by major manufacturing SIC group permits the Department to compile information concerning taxes paid annually either (i) by individual manufacturer or (ii) by all manufacturers under each major SIC group, by aggregating the amounts reported by Washington manufacturers on the appropriate lines of the Combined Excise Tax return, filed by taxpayers, with respect to such manufacturers' selling activities at the wholesale and retail level. A copy of the Washington Combined Excise Tax return is attached as *Schedule B*.

(C) The taxable base against which the manufacturing B&O tax was applied for 1983 and for the first six months of 1984 by Standard Industrial Classification code is set forth in *Schedule C* of this affidavit together with the computation of tax derived by applying the manufacturing B&O tax rate to such base.

(D) At the time of these computations the Department of Revenue did not have entered in its data base taxes paid by Washington manufacturers for the final two calendar quarters of 1984. The Department at the time of this affidavit is completing that part of its internal audit which adjusts for mathematical errors shown on returns filed by taxpayers for the final two quarters of 1984.

/s/ Gary O'Neil

SUBSCRIBED AND SWORN TO before me this 20th day of May, 1985.

/s/ Sharon L. McCall

NOTARY PUBLIC in and for the State of Washington, residing at Olympia.

AFFIDAVIT OF DANIEL KELLER

[Filed July 19, 1985]

IN THE SUPERIOR COURT OF
WASHINGTON FOR THURSTON COUNTY

NO. 84-2-01900-7

NATIONAL CAN CORPORATION,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01916-3

XEROX CORPORATION,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 84-2-01891-4

KALAMA CHEMICAL, INC.,

Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

AFFIDAVIT OF DANIEL KELLER

Kenneth O. Eikenberry, Attorney General
William B. Collins
Assistant Attorney General
415 General Admin. Bldg., AX-02
Olympia WA 98504 (206) 753-5528
....., Wa. .....

STATE OF WASHINGTON)
) ss.
County of Thurston)

DANIEL KELLER, being first duly sworn upon oath, deposes and says:

1. IDENTIFICATION.

I am currently employed by the State of Washington as acting Assistant Director for the Budget Division of the Office of Financial Management, having served also as Senior Executive Policy Coordinator in that division.

I have been with the Office of Financial Management since 1967 and have held the position of Senior Executive Policy Coordinator since 1977. From 1967 to 1977 my principal responsibilities were as budget analyst/budget coordinator for all natural resource functions of state government, and from 1971 to 1976 I also worked on compensation issues such as salary and benefits.

From 1962 to 1967 I was a budget analyst with the Federal Bureau of Reclamation, providing budget analysis for irrigation project construction and operations.

I received my Bachelor of Arts degree in finance from the University of Washington. I have done some graduate studies in finance and accounting toward a Masters degree in business administration.

2. BUDGET AND POLICY DIVISION.

The Budget Division of the Office of Financial Management is the principal central financial entity for all of state government providing budget and financial advice and recommendations to the Governor, developing the Governor's budget proposals to the legislature, providing the support to explain the budget proposals, and providing other statewide financial data to both the legislature and the public. My responsibilities include determining the cost and making recommendations concerning budget proposals that have impacts across state agency lines such as salary increases, benefit increases, pension funding, and state debt service. I am also responsible for developing the tables indicating the current and projected financial status of the state general fund and all other funds under various alternative conditions at any time. In the past I have also been responsible for coordinating the revenue portion of the same budget.

3. PURPOSE OF AFFIDAVIT.

The purpose of this affidavit is threefold:

3.1 To describe the fiscal situation of the State of Washington during the period in which the budget for the July 1, 1985 - June 30, 1987 biennium was under consideration by the legislature and enacted into law.

3.2 To describe with reference to the budget document enacted into law and related documents introduced in this cause as exhibits certain details in the 1985-87 biennial budget including provisions dealing with appropriations (or their absence for the second fiscal year of the biennium (July 1, 1986 - June 30, 1987)), and

3.3 To (i) describe and to quantify possible reductions in amounts appropriated by the legislature for the 1985-87 biennium and the program impacts of such reductions, in the event the State of Washington were required to pay during the biennium as the result of the litigation in this cause tax refunds for the period 1980-84 that approximate $424 million, and (ii) identify other sources of payment for such liabilities.

4. STATE BUDGET 1985-87 BIENNIUM.

4.1 The biennial budget described in this affidavit, except where otherwise indicated, is the "general fund budget". The general fund budget is that part of the total state budget which provides for the operations of most state agencies including the delivery of social services and production of natural resources and providing a major portion of the appropriations for the state's common schools (K-12) and its other educational facilities including community colleges and the state universities. Revenues contributing to the general fund budget include the state's business and occupation tax, retail sales and use taxes, certain other taxes and a certain number of federal grants.

4.2 The total state budget for the biennium, of which the general fund budget is a part, also includes specially dedicated revenues which are more particularly described in subparagraphs 4.8 and 8.4 herein.

4.3 In December, 1984 the then outgoing Governor, John Spellman, submitted to the legislature a proposed general fund budget for the 1985-87 biennium, as required by law, projecting state general fund revenues at $9,646,439,000. Proposed revisions to the 1985-87 operating budget were then submitted to the legislature by incoming Gov-

ernor Booth Gardner showing a revised projection of state general fund revenues in the amount of $9,624,796,000.

4.4 In March 1984 the State's Economic and Revenue Forecast Council projected a decline in general fund revenues for the 1985-87 biennium of $153,000,000, reducing estimates to a level of $9,493,000,000.

4.5 In June 1985 further revisions of projected general fund revenues for the 1985-87 biennium by the Economic and Revenue Forecast Council indicated a further reduction in such revenues in the magnitude of $221,300,000, thereby lowering anticipated general fund revenues for the biennium to a level of $9,271,700,000. This projection was subsequently adjusted to $9,313,000,000 at the time of adoption of the 1985-87 biennial budget.

4.6 The continued reduction in estimates of general fund revenues has reflected the reliance of the state's tax structure on sales taxes for a major portion of such general fund revenues at a time when the projected level of consumption of goods and services in the State of Washington has been declining and the State's unemployment rate has exceeded that of the national average.

4.7 The uncertainty in the general fund revenue forecast caused by the anticipated June 1985 revisions caused adjournment of the legislature in May without the passage of a budget for the 1985-87 biennium. The legislature reconvened in special session on June 10 and adopted the state budget for the 1985-87 biennium.

4.8 The total state budget for the 1985-87 biennium, including estimated federal funds of $3.4 billion, is $17.9 billion. Of that total, $9.1 billion comes from the state general fund. Support for the broad based state general fund

comes from taxes including: sales and use, business and occupation, utility, property and various other excise taxes and an additional element of federal support. The balance of the state budget after reduction for federal funds ($3.4 billion) and general fund revenues ($9.3 billion) is $5.2 billion, and is derived from other, non-general fund sources.

Revenues assignable to non-general fund sources include generally (1) certain tax revenues, most notably motor vehicle fuel taxes; (2) licenses, permits and fees—of which the largest single amount is comprised of motor vehicle licenses and fees; (3) other charges and miscellaneous revenue which incorporate proceeds of bond issues, tuitions and sales of services, materials and supplies. These categories of revenue are set forth more fully in Attachment A.

4.9 The projected surplus at the end of the 1985-87 biennium of $173 million (represented by $9,313 million of projected state general fund revenues in excess of general fund appropriations of $9,140 million) must be evaluated in light of the following considerations:

(a) Appropriations for the second year of the biennium, with few exceptions, contain no general adjustments over the first year for workload or caseload increases or for inflation. Inflation adjustments at the annual rate of 4.3 percent to maintain the same level of services in the second year of the biennium as provided in the first year would approximate $50 million.

(b) State general funds in the budget for public pension obligations is $676 million or $246 million below the state actuary's recommendation for current funding to avoid increasing the State's un-

funded liability obligation which now exceeds $3.2 billion.

5. STATE PROGRAM REDUCTIONS.

5.1 In the event the State is required to issue tax refunds of the magnitude involved in this litigation, it must then confront the necessity of across-the-board reductions in all state programs. However, because of state constitutional requirements, the entire $9.1 billion state general fund budget is not subject to reduction. The basic K-12 public school program is under constitutional protection; likewise revenues collected on behalf of and dedicated to local governments are free from reduction. These dollar amounts are as follows:

K-12 Public School	$4.24 billion
Local Government Revenue	.21 billion
TOTAL	$4.45 billion

5.2 With $4.4 billion of the budget not subject to reduction, there remains only the balance of $4.7 billion from the general fund portion of the budget which could be subject to reductions to raise the necessary revenue. Were an appellate court to order tax refunds as early as June 1986, one-half of the current biennium would have expired before any reduction program could be put in place leaving at most $2.35 billion from which to take the necessary funds. A $424 million reduction, taken from this budget balance, would represent approximately an 18 percent cut in all programs. With any state general fund reduction across the board, one-half would have to come from the human resource programs of the Department of Social and Health Services and

Department of Corrections. This means an 18 percent reduction in aid to the (a) 65,000 families receiving Aid to Dependent Children; (b) 310,000 persons who monthly receive Medical Assistance; (c) 16,000 persons receiving Nursing Home Care to the Aged; (d) institutional support to 4,000 mentally and physically handicapped persons; and (e) some 7,000 inmates currently in correction facilities.

5.3 Programs in state community colleges and higher education institutions currently serving some 80,000 and 69,000 enrollees respectively would likewise be impacted with an 18 percent across the board reduction in state support. Education and vocational training opportunities for many would have to be curtailed or eliminated.

5.4 Human resource programs and higher education make up 72 percent of the "unprotected" available budget. Selective reductions could not be made in the required amount, $424 million, without significantly affecting any area. For instance, the entire Adult Correction Program budget for the biennium totals only $323 million, which represents only three-fourths of the amount necessary to provide for the tax refund liability. Income maintenance of the so-called "welfare" program with Aid to Dependent Children receives a budget of $437 million for the entire biennium. The Medical Assistance budget is $438 million and Nursing Home Care budget is $271 million.

5.5 Entire elimination of the community college system with its 80,000 students and 7,300 employees would provide $481 million for the biennium, half of that amount over the second year of the biennium. Closing the University of Washington with its 30,000 students and 12,000 employees would release $437 million over the full biennium or $218 million in its second year.

6. STAFF CUTS.

The only remaining alternative of staffing reduction also has very severe consequences. $424 million represents approximately 33 percent of the $1,290 million biennial state general fund cost of classified staff in the State of Washington. With only one-half of the biennium left, the reduction would amount to an estimated 66 percent cut in all classified staff. (Classified staff includes merit (civil) service employees but excludes commissioned state patrol offices, faculty at community colleges and four-year universities, ferry service workers, and employees of the legislature and judicial branches.) If all employee jurisdictions were reduced including faculty, exempt personnel, state patrol, and all others, the staff reduction needed would still be approximately 38 percent.

7. TAX REFUNDS PAYABLE

The budget consequences described in paragraphs 5 and 6 pertain to estimated tax refunds for which the State of Washington might be liable for the tax years 1980-84, and do not take into account claims for refunds which might be attributable to 1985 or any subsequent year or portion thereof to the time of judgment adverse to the State. The budget consequences described in paragraphs 5 and 6 are also based on the anticipated General Fund Revenue for the 1985-87 biennium as projected by the Economic and Revenue Forecast Council (¶ 4.5).

8. QUALIFICATIONS TO DESCRIPTION OF STATE PROGRAM REDUCTIONS.

8.1 The program reductions hypothesized in paragraphs 5 and 6 represent the type of state budget adjust-

ments that would be required upon the occurrence of other adverse economic events of comparable dimension such as fluctuations in the economic cycle thereby resulting in a decrease in budget revenues.

8.2 Moreover, the explanation of expenditure impacts in paragraphs 5 and 6 above do not take into account the possible availability of the budget surplus in the 1985-87 biennial budget, additional taxes that might be enacted by the legislature from alternative tax sources, or increased revenues from an improved economy.

8.3 At the request of plaintiffs' counsel I have made alternative calculations showing the impact of tax refunds of varying amounts on state programs and staff. These are shown in Attachment B. Like the figures in paragraphs 5 and 6 the amounts in Attachment B do not take into account budgeted surplus or increased revenues from additional taxes or diversions of non-general fund revenues into the general fund. Attachment B shows for example that if refunds were made in the amount of $50 million in the 1987-89 biennium and spread across the board, the percentage decreases in program (including human services, corrections and education other than K-12) and the related staff cuts would be:

PROGRAM REDUCTIONS	STAFF CUTS
0.5%	1.1%

8.4 (a) The reductions in state programs from state general fund revenues, discussed in paragraphs 5 and 6, do not take into account the possible availability of non-general fund revenues in the state budget. Certain of these

revenues could be redirected by the legislature either under current law or by subsequent legislative change.

(b) By the same token, however, certain revenues in the non-general fund portion of the state budget are constitutionally restricted to certain purposes or are otherwise limited to particular objects of expenditures. For example: (i) Amendment 18 to the Washington Constitution (Art. II, § 40) limits highway funds to use "exclusively for highway purposes". The Enabling Act by which the State of Washington was admitted into the Union restricts proceeds from timber and other natural resource sales to education purposes; (ii) Federal funds allocated to the State of Washington are restricted in their use to the particular purposes for which they are distributed; (iii) The use of the proceeds of bond issues for purposes other than for which the bonds are marketed are similarly limited.

(c) The availability of non-general fund revenues to legislative redirection or reappropriation (computed over the entire 1985-87 biennium) is represented as follows:

Non-General Fund Revenues (¶ 4.8)			$ 5.2
less:	constitutionally restricted revenues	$1.7	
	Proceeds of bond issues	1.1	
	Debit Service	.7	3.5
Non-General Fund Revenues subject to legislation appropriation			$1.7 billion

The application of all or a portion of non-general fund revenues shown to be subject to redirection would have significant impacts, depending on the magnitude of their

redirection, on programs which include, for example, higher and community college education (tuitions), fish conservation (license fees), and alcoholic rehabilitation programs (liquor tax revenues). Of greater importance is the fact that many programs dependent on user fees for their continuation will simply cease to exist or will only continue in truncated form, if these revenues are diverted for the purpose of meeting tax refund liabilities.

I have read the above and believe the same to be true and correct to the best of my knowledge.

/s/ DANIEL KELLER

SUBSCRIBED AND SWORN TO before me this 18th day of July, 1985.

/s/ Shelley A. Sadie
NOTARY PUBLIC in and for the State of Washington, residing at Olympia.

ATTACHMENT A

Non-General Fund Sources	*Billions*
Motor Vehicle Fund	$ 1.6
Bond Proceeds	1.1
Bond Payment Funds	.7
Trust Funds (like unemployment compensation and industrial insurance payments)	.2
Public School Construction Funds	.1
State Patrol Funds	.1
Ferry Operation Funds	.1
Liquor Board Funds	.1
Other: Including	1.2
Game Fund	
Highway Safety Fund	
Timber Management Fund	
Traffic Safety Fund	
Agricultural Inspection Funds	
Internal Support Funds	
TOTAL	$ 5.2

ATTACHMENT B

POSSIBLE IMPACTS ON STAFFING AND PROGRAM LEVELS IF NO ADDITIONAL TAXES OR REVENUES

Assumed Reductions From Refunds or Revenue Declines or Other Reasons	SECOND YEAR OF 1985-87 BIENNIUM FISCAL YEAR 1987 (July 1, 1986 - June 30, 1987)					1987-89 BIENNIUM (July 1, 1987 - June 30, 1989) Assumes same revenues and expenditures as 1985-87 biennium.				
	Program Reductions	Staff Cuts Class.[1]	Staff Cuts All[2]	Combination Program Reduction/ Staff Cuts Prog.	Combination Program Reduction/ Staff Cuts Staff[2]	Program Reductions	Staff Cuts Class.	Staff Cuts All	Combination Program Reduction/ Staff Cuts Prog.	Combination Program Reduction/ Staff Cuts Staff
$ 50 Mil.	2.1%	7.7%	4.5%	1.1%	2.2%	1.1%	3.9%	2.2%	0.5%	1.1%
$100 Mil.	4.2%	15.5%	8.9%	2.1%	4.5%	2.1%	7.7%	4.5%	1.1%	2.2%
$150 Mil.	6.4%	23.2%	13.4%	3.2%	6.7%	3.2%	11.6%	6.7%	1.6%	3.3%
$200 Mil.	8.5%	31.0%	17.8%	4.2%	8.9%	4.2%	15.5%	8.9%	2.1%	4.5%
$250 Mil.	10.6%	38.7%	22.3%	5.3%	11.1%	5.3%	19.4%	11.1%	2.7%	5.6%
$424 Mil.	18.0%	65.7%	37.8%	9.0%	18.9%	9.0%	32.9%	18.9%	4.5%	9.5%

1 Classified staff includes merit system (civil service) employees but excludes commissioned state patrol officers, faculty at community colleges and four-year universities, ferry service workers and employees of the legislative and judicial branches.

2 "All" staff includes classified employees and others not covered by merit system employment. Reference to "staff" under the column "Combination Program Reduction/Staff Cuts" means "all" staff.

FIRST STIPULATION RE: EXHIBITS

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
FOR THURSTON COUNTY

NO. 84-2-01900-7

NATIONAL CAN CORPORATION, et al.,

Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

FIRST STIPULATION RE: EXHIBITS PERTAINING
TO WASHINGTON STATE BUDGET
AND REVENUES

THE PARTIES hereto stipulate that the following shall be admitted into evidence in this matter:

Exhibit Number	*Exhibit Description*
	Revenue Forecasts
1	1985-1987 Biennium — Revenue Forecast, Gary O'Neil, Director, Research and Information Division, Washington Department of Revenue, March 7, 1984.
2	1985-1987 Revenue Forecast -- Economic Alternatives, Gary O'Neil, Director, Research and Information Division, Washington Department of Revenue, July 6, 1984.

Exhibit Number	*Exhibit Description*
3	General Fund Forecast 1983-1985 Biennium, September, 1984 Forecast compared to June, 1984 Forecast, Research and Information Division, Washington Department of Revenue, September 13 and 14, 1984.
4	1985-1987 Estimates, Donn Smallwood, Chief, Research and Statistics, Washington Department of Revenue, September 26, 1984.
5	Economic and Revenue Forecast for Washington State, Office of the Forecast Council, December, 1984.
6	Economic and Revenue Forecast for Washington State, Office of the Forecast Council, March, 1985.
7	Projected 1983-1985 Revenues and Expenditures, Senate Ways and Means Committee, April 30, 1985.
8	Selected pages from proposed Economic and Revenue Forecast for Washington State, Office of the Forecast Council, June, 1985.
9	Comparison of Projected 1985-1987 Revenues and Expenditures, Senate Ways and Means Committee, May 16, 1985.
10	Projected 1983-1985 Revenues and Expenditures, Senate Ways and Means Committee, May 20, 1985.
	Tax Alternatives
11	Tax Alternatives, Research and Information Division, State of Washington, Department of Revenue, January 15, 1985.

Exhibit Number	*Exhibit Description*
12	Tax Alternatives, Research and Information Division, Washington Department of Revenue, March 29, 1985.
13	Tax Alternatives, Research & Information Division, Department of Revenue, April 3, 1985.
	Tax and Spending Data
14	1984 Tax Exemptions.
15	LEAP Budget Information Charts (3): Washington State, General Fund—State, Biennial Expenditures; Washington State LEAP Budgeting Report—Annual Comparison of TOT Washington State; and Washington State, General Fund—State, Biennial Expenditures—Constant Dollars Per Capita 1973-75 Through 1985-87.
16	Major Tax Rate and Base Reductions Since 1970—Estimated 1985-87 State and Local Impact—Graph and Narrative.
	Budget Data
17	Cover and selected pages from Preliminary Official Statement, dated January 25, 1985, State of Washington, General Obligation Refunding Bonds, Series 1985A.
18	Cover and selected pages from Preliminary Official Statement, dated July 1, 1985, State of Washington General Obligation Bonds.

Exhibit Number	*Exhibit Description*
19	Cover and selected pages from Proposed Revisions to the 1985-87 Operating Budget (State of Washington), Submitted by Governor Booth Gardner, March 1985.
	Revenue Bills
20	Senate Bill Report of Engrossed Substitute Senate Bill No. 4228.
21	Draft fiscal note on ESSB 4228, Erling Johnson, Economic Analyst, Washington Department of Revenue, March 28, 1985.
22	Estimated Impact of ESSB 4228, Research and Information Division, Washington Department of Revenue, April 23, 1985.
23	Governor's veto letter regarding ESSB 4228 dated May 21, 1985.
24	Summary of Proposed Senate Bill No. 3677, Washington Department of Revenue, April 8, 1985.
25	Final Bill Report of Substitute Senate Bill No. 3678.
26	Governor's veto letter regarding SSB 3678 dated April 30, 1985.
	Requests for Stay of Collection
27	Plaintiff's request for stay of collection of taxes at issue.
28	Denial of plaintiff's first request for stay of collection of taxes.
29	Plaintiff's second request for stay of collection of taxes at issue.

30	Denial of plaintiff's second request for stay of collection of taxes.
31	Brief of State of Washington as Amicus Curiae in Support of Appellee [West Virginia].

DATED this 19th day of July, 1985.

BOGLE & GATES
/s/ John T. Piper

KENNETH O. EIKENBERRY
Attorney General

/s/ William B. Collins
Assistant Attorney General

EXHIBIT 4

JOHN SPELLMAN (Seal) DONALD R. BURROWS

Governor Director

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

Date September 26, 1984

To Forecast Council

From Donn Smallwood, Chief, Research & Statistics

RE 1985-1987 Estimates

In response to Representative Grimm's request at the September 14 meeting, the attached table indicates the planning estimates for the 1985-1987 biennium that have been presented to the Council so far. All of the forecasts are based on the "control", or most probable, economic assumption scenario at the time the estimates were prepared.

DS:amd

Attachment

cc: Forecast Work Group

EVOLUTION OF 1985-1987 PLANNING ESTIMATES
GENERAL FUND-STATE
($ MILLIONS)

REVENUE BY SOURCE	Feb., 1984 Forecast	June, 1984 Forecast	Sept., 1984 Forecast
DEPARTMENT OF REVENUE			
RETAIL SALES	$4,769.7	$4,713.7	$4,640.1
BUSINESS & OCCUPATION	1,721.3	1,684.0	1,658.9
USE	381.7	376.0	370.0
PUBLIC UTILITY	294.4	292.3	285.3
LIQUOR SALES	165.0	153.1	153.1
CIGARETTE	188.5	188.5	195.1
PROPERTY (SCHOOLS)	1,113.5	1,114.2	1,120.8

REAL ESTATE EXCISE	298.9	268.2	277.3
TIMBER REVENUE	41.8	44.3	38.6
OTHER	211.7	197.4	197.2
SUBTOTAL	9,186.5	9,031.7	8,936.4
DEPARTMENT OF LICENSING			
MOTOR VEHICLE EXCISE	418.3	428.8	425.6
OTHER	40.2	39.8	46.5
INSURANCE COMMISSIONER			
INSURANCE PREMIUMS	119.4	128.4	128.4
LIQUOR CONTROL BOARD			
EXCESS FUNDS & FEES	58.4	52.9	52.9
BEER & WINE SURTAX	3.0	3.0	3.0
LOTTERY COMMISSION			
LOTTERY REVENUE	265.0	213.3	213.3
STATE TREASURER			
INTEREST EARNINGS	51.1	51.9	51.9
OFFICE OF FINANCIAL MANAGEMENT			
DEBT SERVICE	(402.3)	(404.7)	(405.8)
TUITION	278.8	278.8	278.8
BUDGET STABILIZATION ACCOUNT TRANSFER			
OTHER	76.2	76.2	76.2
TOTAL GENERAL FUND-STATE	$10,062.9	$9,900.1	$9.807.2

*CONTROL ESTIMATE

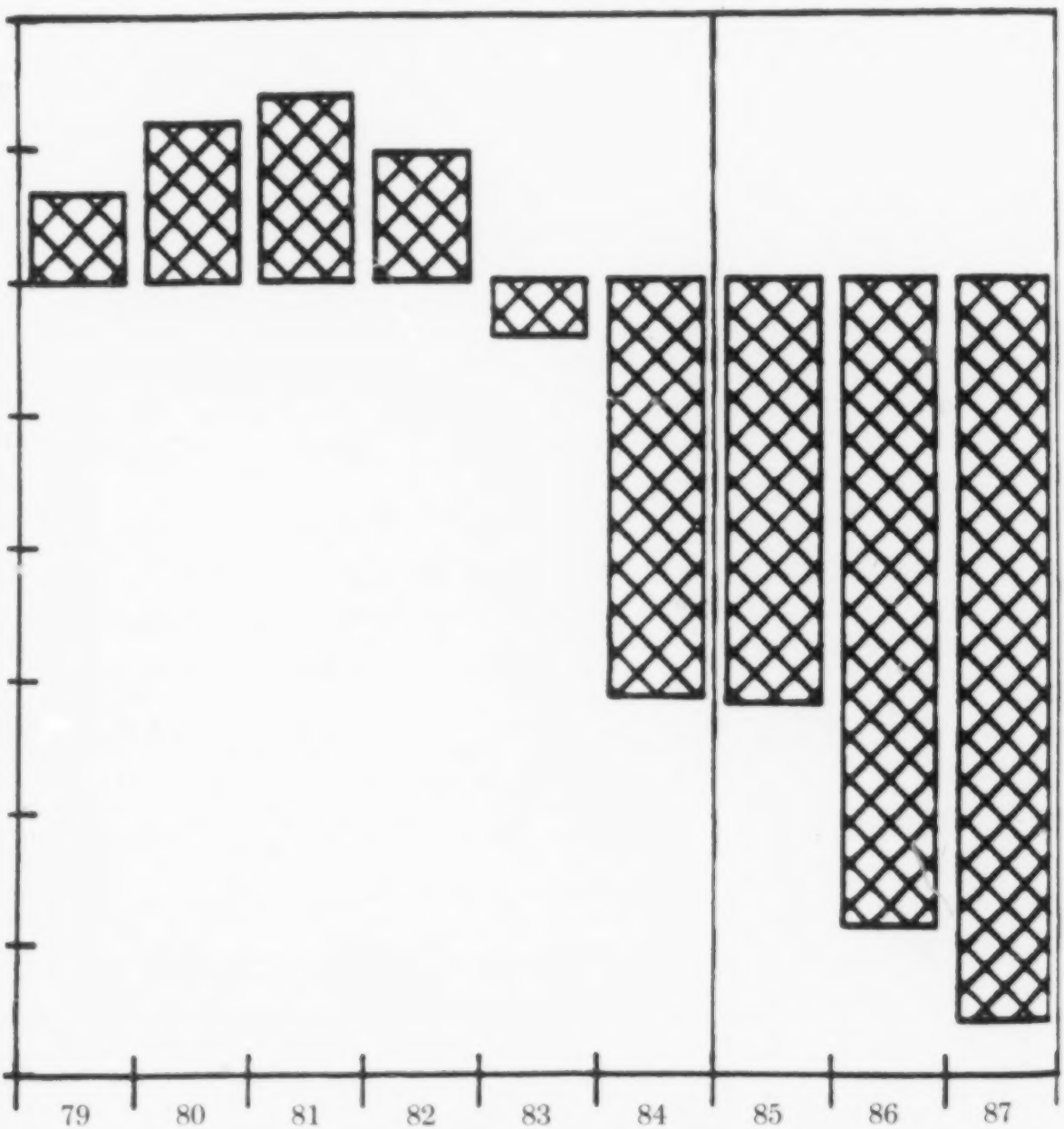
* * *

Research & Information Department of Revenue 24-Sept-84

EXHIBIT 6

ECONOMIC AND REVENUE
FORECAST
For Washington State

U.S. TRADE DEFICIT: SLOWING THE ECONOMY



ECONOMIC AND REVENUE FORECAST COUNCIL

March 1985

(Seal)

STATE OF WASHINGTON

ECONOMIC AND REVENUE FORECAST FOR WASHINGTON STATE

Prepared by
Office of the Forecast Council

OLY.
March 1985

* * *

Preface

The Office of the Forecast Council is required by Chapter 138, Section 1, Laws of 1984 (RCW 82.01, 130) to prepare a quarterly state economic and revenue forecast and submit it to the Economic and Revenue Forecast Council.

The report presents the state's economic and General Fund revenues forecast and provides a background to policymakers for analyzing and planning in their decision-making processes. It is issued four times a year.

Single-copy subscriptions are available to the public free of charge. Mail requests for subscriptions or address changes to: Office of the Forecast Council, State of Washington, AX-02, Olympia, Washington 98504.

Dan McDonald, Chairman
Washington Economic and Revenue
Forecast Council

* * *

Alternative Forecasts

Two alternatives to the Washington State Baseline forecast have been prepared. The Pessimistic scenario calls for a recession during the 1985-87 biennium. In the Optimistic scenario, the current economic expansion continues through the next biennium.

In the Pessimistic scenario, the economy continues to grow during 1985. However, there is no action taken to reduce the federal budget deficit, and by the end of 1985 foreigners begin to reduce their investments in the U.S. The value of the dollar declines, and because of this and the growth of the economy, inflation begins to accelerate. The Federal Reserve is unable to accomodate this combination of strong economic growth and rising inflation, especially when there has been no action taken to reduce the budget deficit. Monetary policy is tightened, and this along with the falling dollar, increased inflation, and large budget deficits drives interest rates sharply higher. A recession occurs in fiscal 1987. The effect of this in Washington is a decline of 0.5 percent in real personal income in fiscal 1987, and a loss of 23,000 jobs. Interest rate sensitive sectors such as lumber and wood products and construction are the hardest hit. Interest rates and the recession have a drastic effect on housing activity in the state. The number of housing units authorized drops from over 31,000 in fiscal 1985 to less than 13,000 in 1987.

In contrast to the Pessimistic scenario, under the Optimistic assumptions everything goes right. Congress passes large budget cuts, and the dollar slides to a more competitive level; the decline is gradual enough to prevent a sharp rise in inflation. The impact of the lower dollar on inflation

is mitigated by OPEC's inability to hold the line on oil prices, which slip to $25 per barrel. Continued low inflation and progress in cutting the deficit permit interest rates to fall, and the economy continues to expand through fiscal 1987. This scenario also implies a strong economy at the state level. Average annual increases in real income and employment are both above three percent during fiscal 1986 and 1987.

A combination of good economic policy and luck is required in the Optimistic scenario: it requires that the deficit be cut sharply; that the financial markets continue to respond to the low inflation rates, allowing interest rates to decline; and that foreign investors, money managers, and central banks take steps to allow the dollar to slide gradually to a more competitive level. Although each of these conditions taken individually is possible, the likelihood that they will all be achieved at once is relatively low.

* * *

Chapter II

Washington State Revenue Forecast

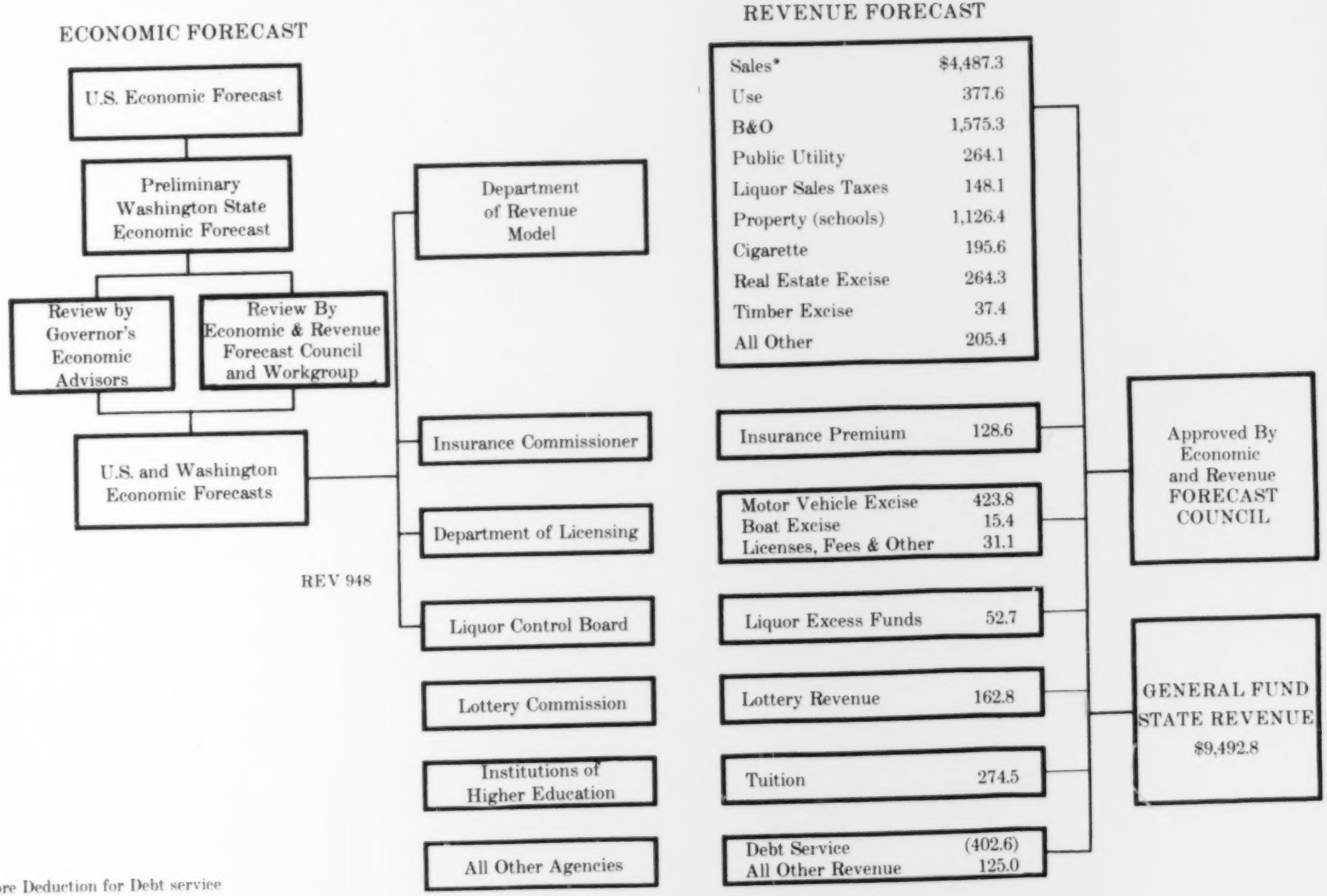
The State General Fund revenue forecast is reviewed and updated quarterly in conjunction with the revised state economic forecast. The March, 1985 forecast for both the 1983-85 and 1985-87 biennia were reviewed and approved by the economic and revenue forecast council, March 18, 1985. This council was created by Chapter 138, Laws of 1984 (RCW 82.01.130) to provide objective revenue estimates for both executive and legislative branches. The Council consists of six members, two appointed by the Gov-

ernor and two appointed by the legislature from each caucus of the Senate and House of Representatives. The members of the Economic and Revenue Forecast Council are listed on the inside front cover.

A flow chart of the forecast process including the March, 1985 baseline forecast for the 1985-87 biennium approved by the Forecast Council is shown in Figure 1.

Each state agency engaged in revenue collection is responsible for preparation of forecasts of its own sources. The staff of the forecast council is responsible for the preparation of the state economic forecast, the revenue forecast of the Department of Revenue's tax sources and the review and coordination of the revenue forecasts of other major revenue collecting agencies. The Office of Financial Management assumes the responsibility of coordinating the forecasts of the 100 or so small state agencies. The state economic forecast updated and reviewed by the Governor's Council of Economic Advisors, forms the basis for the forecast of major state taxes, especially the transaction based taxes such as the retail sales and business and occupation taxes.

FIGURE 1
ECONOMIC AND REVENUE FORECAST FLOW CHART
GENERAL FUND—STATE
1985-87 BIENNIUM
(Amounts in Millions)



*Before Deduction for Debt service

Forecast Change 1985-87

The March forecast for the 1985-87 biennium is $153.6 million below the December, 1984 forecast. The majority of this change is in Department of Revenue sources ($139.2 million) primarily the retail sales, use and business and occupation taxes. The 1985-87 forecast of other agencies was reduced $14.4 million from the December forecast. Table II provides a comparison of the March and December forecasts for 1985-87 by agency. Table III presents the March, 1985 baseline forecast for 1985-87 by fiscal year and by major revenue source.

The primary factors contributing to the $153.6 million reduction in the forecast for 1985-87 are: a lower base in the 1983-85 biennium, lower inflation than expected in December, a stronger real economy, which only partly offsets the negative impact of lower inflation, the expiration of the business and occupation surtax on retailing activity, and adjustments in the other agency revenues. These are summarized below.

Elements of Change

—Lower Base in 1983-85 ($-46.8 million)

—Lower inflation ($225.1 million)

—Stronger real growth (+160 million)

—Expiration of B&O retailing surtax ($-27.3 million)

—Adjustments in the other agency revenues ($-14.4 million)

TOTAL ($-153.6 million)

Collection experience in the last few months of the 1983-85 biennium (October, 1984 - January, 1985 activity periods) indicates that revenues are about two percent below the level expected in December. This lower base is assumed to carry forward to 1985-87 and reduces the 1985-87 estimate by $46.8 million.

The March, 1985 economic forecast assumes that inflation will be much less than expected in the December forecast. The overall price level is 2.3 percent below the December forecast and wholesale prices and the price levels of most consumer durables are 4-5 percent below the level expected in December. The impact of inflation reduces the 1985-87 forecast by an estimated $225.1 million. The March forecast for the real economy is stronger than anticipated in December, offsetting part of the negative impact of lower inflation on revenues. Real personal income is 2.3 percent above the December forecast and employment levels are 1.6 percent higher than December. Overall the lower inflation and the lower base more than offset the improved real economy.

The 1985-87 biennium forecast has been reduced by an additional $27.3 million because the business and occupation seven percent surtax on retailing activity is assumed to expire June 30, 1985 under current law. (See assumptions section).

Other agencies reduced their forecasts for 1985-87 by $14.1 million. Positive adjustments for interest earnings, liquor profits, tuition and debt service were more than offset by lower projections for lottery and motor vehicle excise tax revenue.

The State Treasurer's forecast for interest earnings for 1985-87 was increased by $4.3 million. This increase is

based upon a revised assumption that the average daily investible balance will be at approximately the current level. The tuition forecast is $4.0 million higher than the December forecast due to technical adjustments. The liquor profits forecast is $2.5 million above December's forecast. The Liquor Board assumes a decrease in sales of about 3 percent below the fiscal 1985 level and an increase in profits of about $1.5 per 750 ML of spirits, due to the increase in the Federal excise tax on liquor scheduled October, 1985. The debt service requirements for 1985-87 were reduced by $8.4 million. This saving reflects a decrease in bond sales and interest rates from what was expected in December.

The Department of Licensing reduced their forecast for motor vehicle excise tax by $0.9 million per year for 1985-87. This is a very small adjustment (less than 0.5 percent) and primarily reflects current experience. The most significant change for other agencies was the lottery estimate. The lottery's forecast was reduced by $34 million tor 1985-87. The on-line sales forecast (lotto) was actually increased by $10.4 million however, this was more than offset by a $44.4 million reduction in the instant games forecast.

Alternative Forecast: 1985-87

Two alternative revenue forecasts for state General Fund revenues were prepared: one based on a more optimistic economic scenario than the baseline economic forecast and one assuming a more pessimistic outlook.

Under the optimistic scenario everything goes right for the economy. Real growth for both the nation and Washington State is strong, interest rates fall and inflation is moderate. The pessimistic scenario assumes that interest rates move higher and the economy slips into a recession in 1986. The

summary of the economic forecast in Chapter I provides more detail for these scenarios.

Table IV shows the revenue implications of the optimistic and pessimistic economic forecasts. The optimistic scenario generates $9,948.3 million during the 1985-87 biennium. This is $455.5 million above the baseline forecast. Under the pessimistic alternative, General Fund state revenues total $9,054.3 million in the 1985-87 biennium this is $438.5 million below the baseline forecast.

* * *

Table IV

March, 1985 Alternative Forecasts Compared
to March, 1985 Baseline Forecast
1985-87 Biennium
($ Millions)

Agency/Source	March, 1985 Optimistic Forecast	March, 1985 Baseline Forecast*	March, 1985 Pessimistic Forecast
Department of Revenue			
Retail Sales	$ 4,727.8	$ 4,487.3	$ 4,241.1
Business and Occupation	1,611.6	1,575.3	1,527.9
Use	407.2	377.6	352.4
Public Utility	265.3	264.1	260.4
Real Estate Excise	357.7	264.3	184.6
Property	1,132.7	1,126.4	1,120.1
Other	605.0	586.5	569.1
Subtotal	$ 9,107.3	$ 8,681.5	$ 8,255.6
Department of Licensing	483.3	470.3	457.7
Insurance Commissioner[1]	128.6	128.6	128.6
Lottery Commission	180.0	162.8	155.0
Treasurer Interest Earnings	38.1	56.2	76.9
Liquor Profit/Fees[2]	57.3	55.6	54.0
Office of Financial Management			
Debt Service	(396.9)	(402.6)	(403.4)
Tuition	281.1	274.5	267.7
Other	69.5	65.9	62.2
TOTAL			
General Fund-State	$9,948.3	$9,492.8	$9,054.3
Difference from Baseline	$455.5	.....	$ -438.5

[1]Insurance Premiums

[2]Includes Beer/Wine Surtax

CG:smb
03-25-85
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* * *

EXHIBIT 8

Table I

General Fund State Revenue
Comparison of June, 1985 Forecast to March 18, 1985
Forecast 1985-87 Biennium
(Amounts in Millions)

Agency	March 18, 1985[1]	June, 1985[2]	Difference
Department of Revenue	$ 8,681.5	$ 8,438.6	$ -242.9
Other Agencies	811.3	832.8	21.5
Total General Fund*	$ 9,492.8	$ 9,271.5	$ -221.3

[1]Approved by the Economic and Revenue Forecast Council, March 18, 1985.

[2]Based on current law. Includes impact of legislation enacted during the 1985 regular legislative session.

*Detail may not add due to rounding.

Office of the Forecast Council
850510M1
05-29-85

Table II

Department of Revenue General Fund Forecast
1985-87 Biennium
June, 1985 Forecast Compared to March, 1985 Forecast
$000

Source	March, 1985 Forecast-#1	Legislative Adj-#2	Forecast Change	June, 1985 Forecast	Total Change
Retail Sales	$4,487.3	($ 5.2)	($179.7)	$4,302.4	($184.9)
Business & Occupation	1,575.3	9.4	(59.1)	1,525.7	($50)
Use	377.6	(0.3)	(2.7)	374.6	($3)
Public Utility	264.1	8.0	23.7	295.9	$32
Tobacco Product	11.8		0.4	12.1	$0
Conveyance	23.7		(1.1)	22.5	($1)
Penalty & Interest	53.8		(0.3)	53.5	($0)
Revenue Act Subtotal	$6,793.6	$11.9	($218.9)	$6,586.6	($207.0)
Liquor	148.1		(7.1)	141.0	(7.1)
HUD Privilege	41.6		1.0	42.6	1.0
Cigarette	195.6		0.0	195.6	0.0
Property (Schools)	1,126.4		0.0	1,126.4	0.0
Other Property	12.8		(.0)	12.8	(.0)
Inheritance/ Estate	23.4		0.0	23.4	0.0
Leasehold	15.5		(0.2)	15.3	(0.2)
Fish	4.3	(0.4)	(.0)	3.9	(0.4)
Real Estate Excise	264.3		(30.7)	233.6	(30.7)
Public Timber	0.0		0.0	0.0	0.0
Other	18.6		1.3	20.0	1.3
On Revenue Act Subtotal	1,850.6	(0.4)	(35.6)	1,814.6	(35.9)
Private/Public Timber Distributions	37.4		$0	37.4	$0
Total General Fund Impact	$8,681.6	$11.5	($254.4)	$8,438.6	($242.9)

[1]Approved by the Forecast Council March 18, 1985.

[2]Legislation enacted during the 1985 regular Legislative session.

Office of Forecast Council
Department of Revenue
31-May-85

* * *

Table II

General Fund State Revenue—Other Agencies
Comparison of June, 1985 Forecast to March 18, 1985 Forecast
1985-87 Biennium
(Amounts in Millions)

Source/Agency	March 18, 1985 Forecast	Legislative Changes	Forecast Changes	June, 1985 Baseline	Total Changes
Department of Licensing					
Motor Vehicle	$423.8	—	9.4	433.2	9.4
Other	46.5	1.1	-.1	47.5	1.0
Insurance Commissioner					
Insurance Premiums	128.6	—	2.1	130.7	2.1
Liquor Control Board					
Liquor Profits and Fees	52.7	—	-3.0	49.7	-3.0
Beer & Wine Surtax	2.9	—	—	2.9	—
Lottery Commission					
Lottery Revenue	162.8	—	—	162.8	—
State Treasurer					
Interest Earnings	56.2	—	-2.4	53.8	-2.4
Office of Financial Management					
Debt Service	(402.6)	—	10.5	(392.1)	10.5
Tuition	274.5	—	-9.5	265.0	-9.5
Budget Stabilization Account Transfer	—				
Other	65.9	1.4	11.9	79.2	13.3
Total General Fund—State	$811.3	2.5	19.0	832.8	21.5

*Detail may not add due to rounding.

Office of the Forecast Council
50510N1
05-29-85

* * *

Table 1

General Fund State Revenue
Comparison of June, 1985 Baseline with Alternatives
1985-87 Biennium
$ Millions

Agency	Optimistic	Baseline	Pessimistic
Department of Revenue	$8,817.2	$8,438.6	$7,959.4
Other Agencies	869.1	832.8	782.9
TOTAL General Fund	$9,686.3	$9,271.5	$8,742.3
Difference from Baseline	$ 414.5		$ -529.2
Difference from March 18, 1985	$ 193.5	$ -221.3	$ -750.5

Office of the Forecast Council
850510R1
05-30-85

* * *

EXHIBIT 13

Alternative	Tax Alternatives ($Millions) 1983-85 Biennium*	1985-87 Biennium**
Base Extensions		
1 Sales Tax on Motor Vehicle Fuel		
Including State & Federal Tax	—	$ 375.0
Excluding State & Federal Tax	—	295.0
2 Sales Tax on Selected Services	$ 32.2	772.3
3 Eliminate B&O Exemption—Direct Sellers	.3	6.8
4 Eliminate WHSL Functions (B&O) Exemption—Grocers	.2	4.8
5 Extend Pub Util Tax to Garbage, Sewer	.4	10.2
6 Eliminate Sales Tax Exemption—Res Local Phone Service	.9	23.8
Tax Rate Increases		
1 B&O Surtaxes—Nonservice		
+25%	.9	22.4
+50%	1.7	44.1
+75%	2.6	66.6
+100%	3.5	89.2

2 Service Rate		
+.1	1.3	32.5
+.5	6.3	160.3
+1.0	12.8	324.7
3 Sales Tax		
+.1	2.5	67.0
+.3	7.5	200.7
+.5	12.3	333.6
+.7	17.2	466.0
+1.0	24.5	663.5
4 Real Estate Excise		
1.14%	.7	17.3
1.25%	1.8	44.5
1.50%	4.4	106.2
1.75%	7.0	168.0
2.0%	9.6	229.7
5 Conveyance Tax		
1.14%	.1	1.6
1.25%	.2	4.0
1.50%	.4	9.5
1.75%	.6	15.0
2.00%	.9	20.6
6 Insurance—Raise Domestic Rate to Equal Foreign	—	13.6
7 Estate Tax—Federal Ex. Levels, Rates 50% Higher	—	7.8
8 State Prop. Tax Levy—Raise 106% to 110%	—	28.7***
9 State Prop. Tax Levy—Raise From $3.60 to $4.00	—	139.2***
10 Cigarette Tax—Increase Rate 8 Cents	—	64.0
New Taxes		
Intangibles (1%)	—	20.0
1% Tax on Gross Income—Bus. & Indiv.	—	1,800.0***
Reinstate Inheritance Tax	—	88.5

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*-Effective May 1, 1985

**-Effective June 1, 1985

***-18 Months

RESEARCH & INFORMATION DIVISION
DEPARTMENT OF REVENUE

03-APR-85

BEST AVAILABL

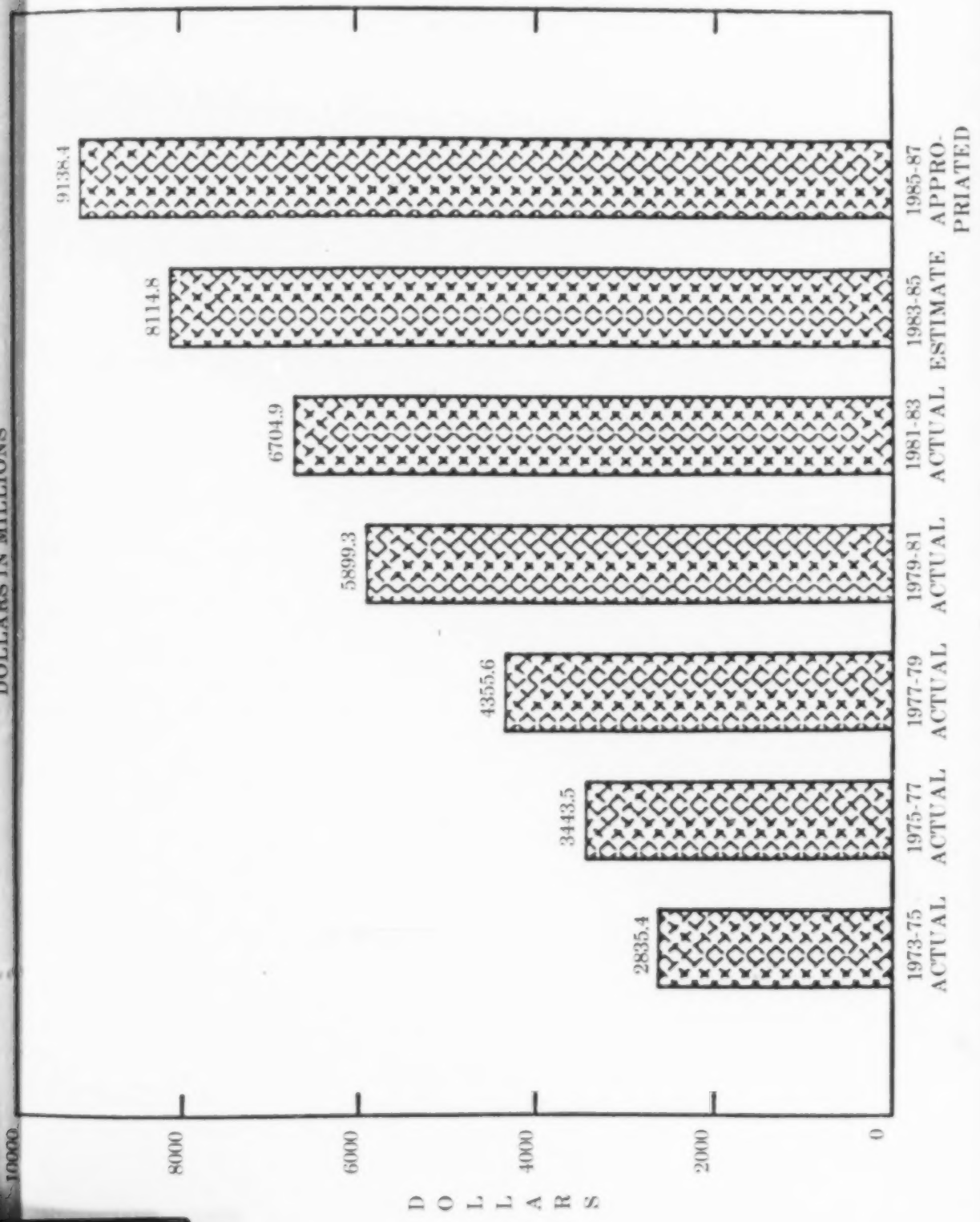
(SEAL
LEAP OFFICE)

07/05/85

09:09

EXHIBIT 15

WASHINGTON STATE
GENERAL FUND-STATE
BIENNIAL EXPENDITURES



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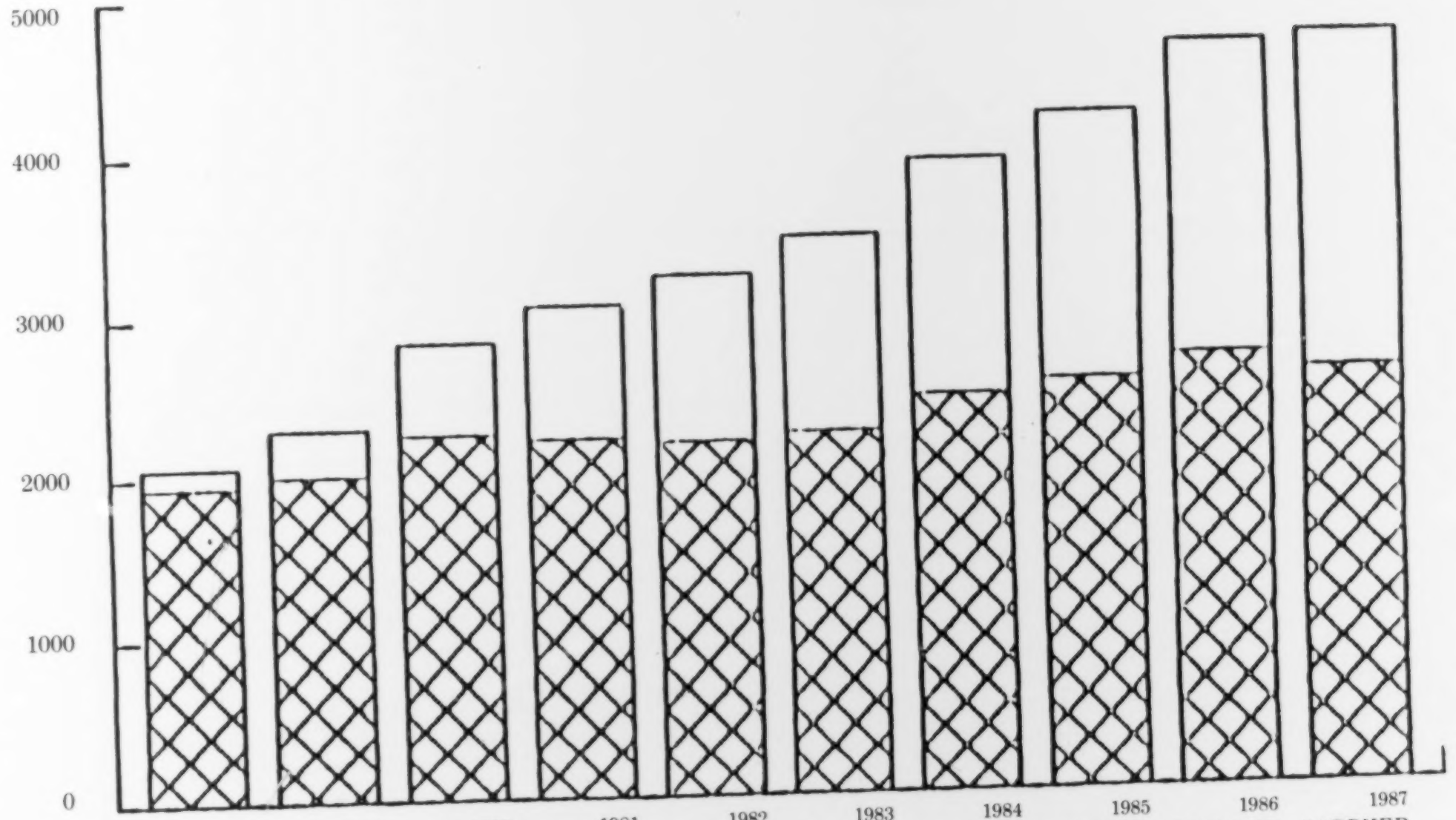
Date 04/01/85
Time 11:23

WASHINGTON STATE
LEAP BUDGETING REPORT
ANNUAL COMPARISON OF
TOT WASHINGTON STATE

GENERAL FUND-STATE
ACTUAL AND CONSTANT IPD(FY1977-BASE) DOLLARS IN MILLIONS



	1978 ACTUAL	1979 ACTUAL	1980 ACTUAL	1981 ACTUAL	1982 ACTUAL	1983 ACTUAL	1984 ACTUAL	1985 ESTIMATE	1986 GARDNER	1987 GARDNER
ACTUAL $	2,060.2	2,295.4	2,837.4	3,061.8	3,239.7	3,465.2	3,928.6	4,206.5	4,637.9	4,686.1
CONSTANT $	1,941.2	2,000.0	2,253.3	2,215.8	2,184.6	2,232.1	2,451.3	2,535.9	2,688.5	2,575.1

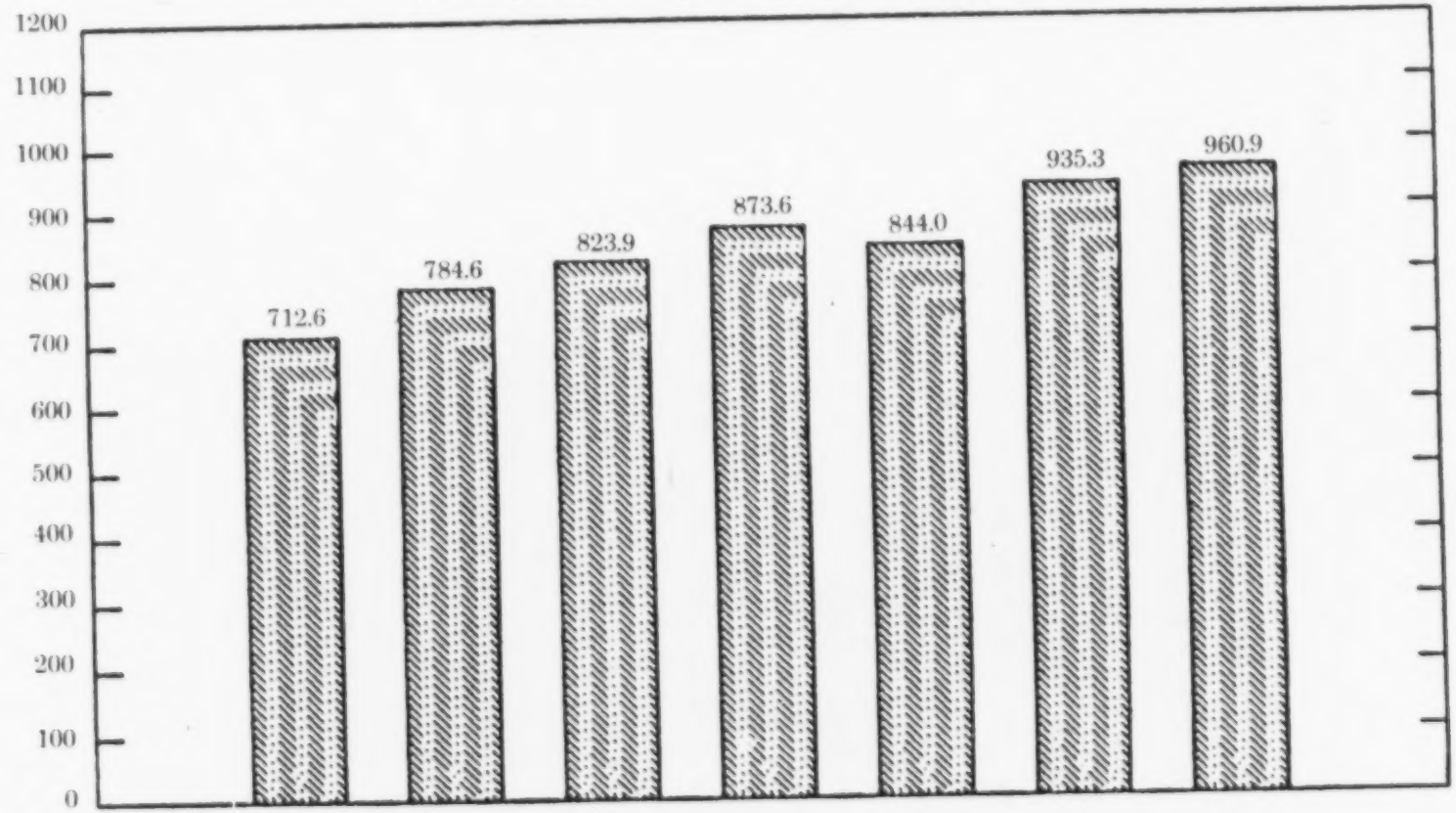
The difference between actual and constant dollars is solely inflation.
It does not depict population increases, court decisions, and older average age.

WASHINGTON STATE GENERAL FUND-STATE BIENNIAL EXPENDITURES
CONSTANT DOLLARS PER CAPITA 1973-75 THROUGH 1985-87

DATE 07/02/85

TIME 10:10

IPD USED AS A DEFLATOR BASE YEAR-1974



% CHANGE	10.1	5.0	6.0	-3.4	10.8	2.7
% GROWTH (CUMULATIVE)	10.1	15.6	22.6	18.4	31.3	34.8

EXHIBIT 16

MAJOR TAX RATE AND BASE REDUCTIONS SINCE 1970

ESTIMATED STATE AND LOCAL IMPACT FOR 1985-87 BIENNIUM

(DOLLARS IN THOUSANDS)

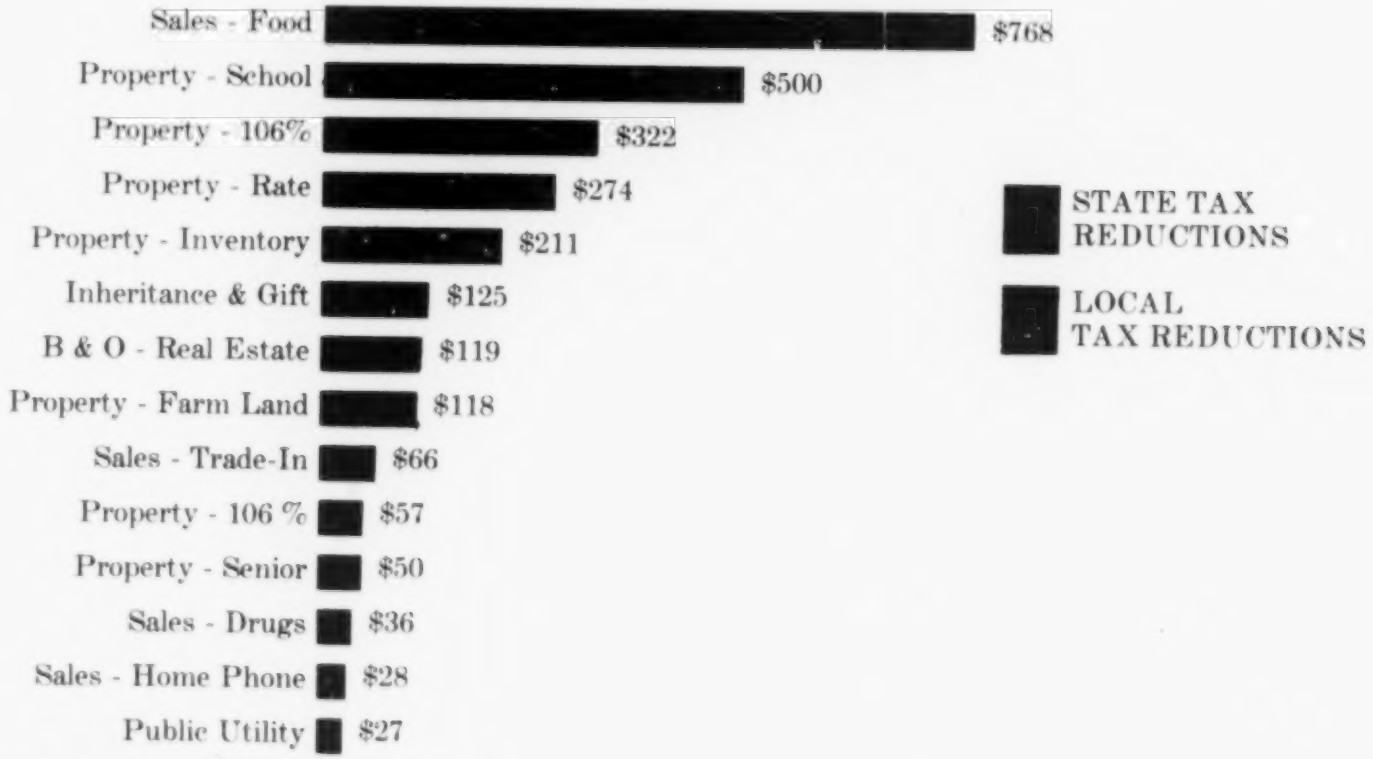
Tax Reduction (Year Effective)	State	Local	Total
Property Tax[1]			
106 Percent Limit On Regular Levies:			
Local Levies (1974)	$	$ 322	$ 322
State School Levy (1979)	57	.....	57
10 Percent Reduction In Statutory Levy Rates (1975)	125	149	274
Limitation Of Special M&O School Levies (1977)	.....	500	500[2]
Senior Citizens Exemption (1971, Last Expanded In 1983)	13	37	50
Current Use Assessment Of Farm Land (1973)	40	78	118
Exemption Of Business Inventories (1984-B&O Credit Since 1974)	67	144	211

[1] Because of the 106 percent limit, property tax exemptions do not always reduce taxing district revenues by the amount indicated; the impact is often shifted to remaining taxpayers.

[2] Special levies subject to voter approval. Based on historical success patterns, projected special levies would have been $400 to $600 million higher if the limitation were not imposed.

Tax Reduction (Year Effective)	State	Local	Total
Retail Sales Tax			
Exemption For Food Products Consumed Off-Premises (1978)	652	116	768
Exemption For Prescription Drugs (1974)	30	6	36
Exemption For Local Residential Telephone Service (1983)	24	4	28
Exemption For Trade-Ins Of Like-Kind Items (1984)	66	.....	66
Other			
B&O Deduction For Real Estate Loans (1970)	119	.....	119
Repeal Of Inheritance And Gift Taxes (1982)	125	.....	125
Public Utility Deduction For Renewable Energy Resources (1980)	27	.....	27
Total Biennial Savings To Taxpayers	$1,345	$1,356	$2,701

MAJOR TAX RATE AND BASE REDUCTIONS SINCE 1970 — $2,701 MILLION TOTAL
Estimated 1985-87 State and Local Impact



Figures in Millions of Dollars
Total State Reductions - $1,345 Million
Total Local Reductions - $1,356 Million

MAJOR TAX RATE AND BASE REDUCTIONS SINCE 1970
Estimated State and Local Impact for 1985-87 Biennium

Tax Reduction (Year Effective)	Amount ($000,000)
Property Tax[1]	
106% limit on regular levies:	
local levies (1974)	322
state school levy (1979)	57
10% reduction in statutory levy rates (1975)	274
Limitation of special M&O school levies (1977)	500[2]
Senior citizens exemption (1971, last expanded in 1983)	50
Current use assessment of farm land (1973)	118
Exemption of business inventories (1984—B&O credit since 1974)	211
Retail Sales Tax	
Exemption for food products consumed off-premises (1978)	768
Exemption for prescription drugs (1974)	36
Exemption for local residential telephone service (1983)	28
Exemption for trade-ins of like-kind items (1984)	50
Other	
B&O deduction for real estate loans (1970)	119
Repeal of inheritance and gift taxes (1982)	125
Public utility deduction for renewable energy resources (1980)	27
TOTAL BIENNIAL SAVINGS TO TAXPAYERS	$ 2,685

[1] Because of the 106% limit, property tax exemptions do not always reduce taxing district revenues by the amount indicated; the impact is often shifted to remaining taxpayers.

[2] Special levies subject to voter approval. Based on historical success patterns, projected special levies would have been $400 to $600 million higher if the limitation were not imposed.

Research & Information
Department of Revenue
May 20, 1985

* * *

EXHIBIT 18

PRELIMINARY OFFICIAL STATEMENT, DATED JULY 1, 1985

(This is a Preliminary Official Statement, subject to correction and change. This Preliminary Official Statement does not constitute an offer to sell nor the solicitation of an offer to buy in any jurisdiction in which it is unlawful to make such offer, solicitation or sale.)

In the opinion of Bond Counsel, interest on the Bonds is exempt from federal income taxes under existing federal law and rulings.

(SEAL)

$230,440,000*
STATE OF WASHINGTON
GENERAL OBLIGATION BONDS

Dated: August 1, 1985 Due: September 1, as shown below

The Bonds are general obligations of the State to which the full faith, credit and taxing power of the State is unconditionally pledged. The Bonds maturing September 1, 1996 and thereafter are subject to redemption beginning September 1, 1995 at par, plus accrued interest to the date of redemption.

The Bonds of each series are issuable in fully registered form in the denomination of $5,000 or any integral multiple thereof.

Interest on the Bonds is payable on March 1, 1986 (seven months) and semiannually thereafter on each September 1 and March 1.

Amounts of Maturities

Year	Amount of Maturities Due September 1	Rate	Yield or Price	Year	Amount of Maturities or Mandatory Redemption Due September 1	Rate	Yield or Price
1986	$ 5,590,000	%	%	1999	$14,965,000	%	%
1987	6,830,000			2000	16,055,000		
1988	7,225,000			2001	17,250,000		
1989	7,645,000			2002	4,420,000**		
1990	8,145,000			2003	4,835,000**		
1991	8,660,000			2004	5,270,000**		
1992	9,255,000			2005	5,760,000**		
1993	9,895,000			2006	6,270,000**		
1994	10,570,000			2007	6,860,000**		
1995	11,310,000			2008	7,485,000**		
1996	12,125,000			2009	8,165,000**		
1997	13,005,000			2010	8,915,000**		
1998	13,935,000						

(Plus accrued interest)

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*Subject to change.

**Subject to optional bidder designation of Term Bonds, in which case the amounts shown may be retired by mandatory redemption. See Official Notice of Sale and Description of the Bonds herein.

The Bonds are offered when, as and if issued, subject to approval of legality by Messrs. Bogle & Gates, Seattle, Washington, Messrs. Perkins Coie, Seattle, Washington, Messrs. Preston, Thorgrimson, Ellis & Holman, Seattle, Washington, Messrs. Riddell, Williams, Bullitt & Walkinshaw, Seattle, Washington or Messrs. Roberts & Shefelman, Seattle, Washington, Bond Counsel, and certain other conditions.

July , 1985

* * *

Washington's 1984 unemployment rate of 9.5% exceeded the U.S. rate of 7.5%. However, because of the industrial mix of the economy, the State's unemployment rate has generally been higher than the national rate. The State's April 1985 seasonally adjusted unemployment rate was 8.8%.

Budgetary Controls

The State operates on a July 1 to June 30 fiscal year and on a biennial budget basis, the constitutionally prescribed fiscal period. The current biennium will end June 30, 1985. State law requires a balanced biennial budget. Furthermore, whenever it appears that expenditure of appropriated funds will exceed revenues, the Governor is required to reduce expenditures of appropriated funds. To assist in its financial planning, the State prepares quarterly econometric forecasts which are derived from national econometric models. The legislature, through enactment of ESHB No. 1083 in 1984, established the Economic and Revenue Forecasting Council in the Department of Revenue. This Council consists of six members, two appointed by the Governor, and two appointed from each of the political caucuses of the Senate and House of Representatives. The Council approves the official revenue forecast for the State of Washington.

Revenues and Expenditures

State taxes include excise taxes and ad valorem property taxes; the State Constitution, as interpreted by the State Supreme Court, prohibits the imposition of net income taxes. The principal excise taxes which support the State's General Fund are the retail sales tax and the business and occupation tax. Excise taxes on motor fuels

are dedicated to supporting highway and road construction and maintenance. The level of revenues generated by both the retail sales tax and the business and occupation tax is very sensitive to changes in disposition of personal income making it difficult accurately to forecast revenue receipts. From 1976 to 1979 those tax revenues increased substantially faster than personal income. From 1980 to 1982, growth in those tax revenues significantly lagged increases in income, resulting in the necessity for reduced expenditures, increased taxes, and deferred retirement fund payments in the 1981-83 biennium. The increase in fiscal 1983 exceeded the growth in personal income due in part to legislative enacted tax rate increases and a temporary extension of the sales tax base to include food for home consumption. Due to a stronger State economy in Fiscal Year 1984, retail sales and business and occupation tax revenues increased more rapidly than personal income. Growth in the retail sales tax and the business and occupation tax is projected to lag personal income growth in Fiscal Years 1986 and 1987, after adjustments have been made to offset the affect of the elimination of the "twenty-fifth month" in the 1983-85 biennium.

1983-85 Biennium

The 1983-85 Biennium ended June 30, 1985. The most recent revenue and economic forecast approved by the Revenue and Economic Forecast Council in June 1985 estimates total General Fund revenues at $9,976.5 million including private-local and federal funds. Subsequent to the June 1985 forecast, changes in federal and private-local reimbursement increased revenues by $37.3 million,

to a biennial total of $10,013.8 million. The official revenue forecast for the general fund-state portion was $8,107.2 million. After legislative changes, however, the General Fund-State estimate is $8,109.2 million. Combined retail sales and business and occupation revenues are approximately 36.7 percent and 12.4 percent, respectively, of the total General Fund.

Total General Fund expenditures are estimated at $10,019.3 million. Approximately 51.6% of this amount is for education and 37.1% for human resources.

1985-87 Biennium

The 1985-87 budget passed in June 1985 was based on the June economic and revenue forecast approved by the Economic and Revenue Council. After revisions resulting from legislative action and revised collection procedures, current revenue estimates are $9,314.9 for General Fund-State, and $11,442.1 for the total General Fund, including the federal and private-local portion, representing increases of 14.9 percent and 14.3 percent, respectively.

Of total general fund expenditures of $11,267.0 million, approximately 52.8 percent is for education and 37.3 percent for human resources. The anticipated ending fund balance is $175.1 million.

The 1985-87 Capital budget funds the first two fiscal years (FY 1986 and 1987) of the State's "Six Year Facility and Capital Plan." The budget contains $588 million from all funds to support more than 350 projects in all areas of state government. Education programs will receive $420 million or 71.4 percent of all capital funds and human resources will receive $75 million or 12.7 percent.

• • •

Litigation Potentially Affecting Future Expenditures and Revenues

The United States Federal District Court for Western Washington has recently held in a "comparable worth" lawsuit that the State of Washington had discriminated and continues to discriminate against women employees of the State in violation of Title VII of the Federal Civil Rights Act. The State has appealed the court's decision.

The Office of Financial Management estimates that the financial impact on the State of the legal position originally proposed by the plaintiffs would have been in excess of $900 million. In a January 10, 1984 ruling the district court denied some of the plaintiffs' requests for damages (including interest on back pay of approximately $125 million) and granted others. A preliminary estimate by the Office of Financial Management of the financial impact on the State if the ruling were affirmed on appeal is approximately $377 million, of which approximately $95 million would be current salary costs for the 1983-85 biennium. The balance would be back pay and associated pension funding requirements. Both the State and the plaintiffs have appealed the district court decision. On March 5, 1984, the State was granted a stay of payments on the decision by the U.S. Ninth Circuit Court of Appeals, pending outcome of appeal. The State estimates that approximately 66% of any payments which may be due as a result of such litigation would be payable from the General Fund and the balance from other State funds.

The budget for the 1985-87 biennium appropriates $45.9 million for implementation of comparable worth salary increases. The expenditure of $41.4 million out of

this appropriation, however, is contingent upon settlement of the litigation.

In addition, in December 1984, tax refund suits were brought against the State of Washington by more than 170 manufacturers and out-of-state manufacturers selling products in Washington, alleging the unconstitutionality of Washington's manufacturing, wholesaling, and retailing business and occupation tax as applied to these businesses. The refund claims are based upon the recent ruling of the United States Supreme Court in *Armco, Inc. v. Hardesty,* — U.S. —, 81 L.Ed.2d 540 (1984), holding that West Virginia's wholesaling business and occupation tax discriminated against out-of-state manufacturers selling in that state.

Claims in litigation and administrative requests for refund filed with the Washington State Department of Revenue currently approximate $96 million for the period 1980-84. The State anticipates additional refund claims in 1985 with respect to tax years 1981-84, not foreclosed by the statute of limitations.

On June 24, 1985, the Thurston County Superior Court denied the claims for refund and upheld application of the tax. Because of the nature of the issues in the litigation an appeal to the Washington State Supreme Court, and thereafter to the United States Supreme Court, is probable.

If damages ultimately are assessed against the State as a result of the "comparable worth" lawsuit or refunds are ordered in the tax litigation, the State could, among other things, reduce expenditures on services, reduce the number of its employees, restrict the number of new em-

ployees hired, defer employee salary increases, increase user fees and license taxes, use any existing general fund surplus or raise certain taxes. Tax refunds would be payable from the General Fund.

For a further discussion of these lawsuits, see "Litigation" herein.

* * *

LITIGATION

There is not now pending any litigation restraining or enjoining the sale, issuance, execution or delivery of the bonds or in any other manner affecting the validity of the bonds or the proceedings or authority pursuant to which they are to be sold and issued.

At any given time, including the present, there are numerous lawsuits pending against the State of Washington which would, if successful, affect the state's revenues or expenditures. The Attorney General of the state is of the opinion, however, that with certain exceptions below noted, no pending suits within that category would, if successful, have a material adverse effect on either state revenues or expenditures:

(1) *"Comparable Worth" Litigation:*

The first exception involves a "Comparable Worth" suit brought by the Washington Federation of State Employees in the United States District Court. The lawsuit, which is the first such lawsuit brought against any state, claims that the State of Washington pays less to employees in certain job categories held predominantly by women than to those employees in different job categories held predominantly by men and regarded as comparable.

On December 14, 1983, the district court entered its decision finding that the State of Washington was thus discriminating. Based on that finding the court awarded the plaintiffs both prospective relief and back pay, but denied their request for prejudgment interest in the approximate amount of $125 million. The estimated cost of the award, if sustained on appeal, would be approximately $375 million—compared to the approximately $960 million which the plaintiff union initially sought.

Both the state and the union then appealed the decision of the district court to the Ninth Circuit Court of Appeals. On March 5, 1984, the appellate court accepted jurisdiction of the case as appealed, and it further granted the state's request for a stay of the district court's decision. Accordingly, the state is not now required to change its compensation system or to pay any monies as ordered by the district court pending appeal. The case was orally argued before the Court of Appeals on April 4, 1985 and is now under advisement. Considering the novelty of the lawsuit, the state believes that it will be ultimately appealed to the United States Supreme Court by whichever party is unsuccessful before the Ninth Circuit Court of Appeals.

(2) *Business and Occupation Tax—Interstate Commerce Challenge:*

During the last week of December, 1984, suits were commenced in the Thurston County (Washington) Superior Court by a large number of Washington manufacturing firms as well as several out-of-state manufacturers selling their products in Washington. Those suits challenged the constitutionality of Washington's business and

occupation tax as applied to (a) Washington manufacturers who sell their products elsewhere and (b) out-of-state manufacturers who sell their products in Washington. The cases are based upon the Commerce Clause of the United States Constitution as recently construed and applied by the United States Supreme Court in the *Armco* case (*Armco v. Hardesty,* — U.S. —, 81 L.Ed.2d 540 (1984)) out of West Virginia. The plaintiffs, at this time, are seeking a refund of business and occupation taxes paid since 1980. According to the most recent Department of Revenue estimates the total potential recovery by the plaintiffs, and others similarly situated should they also elect to sue, would be in the neighborhood of $248 million with respect to the tax on manufacturing and approximately $176 million should the tax on out-of-state manufacturers selling their products in Washington also be invalidated. The principal cases were consolidated for argument before the Thurston County Superior Court. On June 24, 1985, that court issued a memorandum opinion denying the refunds and upholding both applications of the tax. This matter, likewise, is one which will quite probably involve, ultimately, an appeal to the United States Supreme Court for final resolution. It should also be noted, however, that a bill was enacted by the recently adjourned state legislature which is designed to reduce the potential level of state liability in this area. *See* "1985 Legislative Changes."

(3) WPPSS *Bondholders Suit:*

In late November of 1984 holders of Washington Public Power Supply System (WPPSS) Project No. 4 and No. 5 revenue bonds sued the State of Washington and certain elected officials of the state in a class action in

King County (Washington) Superior Court seeking, under several alternative theories, to impose liability on the state as a consequence of default by WPPSS on those bonds. The position of the state in response to this action is that neither it nor any of its officers are liable on the bonds or as a consequence of the default. The Superior Court agreed and, on June 27, 1985, granted the state's motion to dismiss the action for failure to state a legally viable claim. The total amount sought by the plaintiffs by way of damages is in excess of $7.25 billion and an appeal is currently under consideration.

* * *

EXHIBIT 19

PROPOSED REVISIONS TO THE 1985-87 OPERATING BUDGET

(SEAL)

Submitted by
Governor Booth Gardner

March 1985

WASHINGTON STATE REVENUE
(Dollars in Thousands)

Source	1983-85 Biennium General Fund	1983-85 Biennium All Funds	1985-87 Biennium General Fund	1985-87 Biennium All Funds
State Taxes				
General and Selective Sales				
Retail Sales	3,721,051	3,809,706	4,417,756	4,547,965
Use	327,423	327,423	391,398	391,398
Motor Vehicle Fuels	0	734,316	0	849,924
Liquor Sales	143,708	160,612	152,342	170,304
Cigarette and Tobacco	197,079	197,079	207,419	207,419
Real Estate Excise	189,270	189,270	262,375	262,375
Gross Receipts				
Business and Occupation	1,269,401	1,269,401	1,598,202	1,598,202
Public Utility	238,873	238,873	275,285	275,285
Insurance Premiums	113,660	113,660	128,608	128,608
Property & In-Lieu Excises				
Property	978,573	978,573	1,139,317	1,139,317
Motor Vehicle Excise	375,681	423,489	425,597	473,916
Boat Excise	8,454	8,454	15,441	15,441
Public Utility District Excise	33,740	33,740	40,090	40,090
Timber Excise	32,980	75,645	37,380	78,170
Miscellaneous				
Inheritance and Gift	38,826	38,826	22,600	22,600
Other Taxes	102,525	116,892	114,179	130,856
Total Taxes	7,771,244	8,715,959	9,227,989	10,331,870
State Non-Tax Revenue				
Licenses, Permits, Fees	61,967	441,629	68,065	467,661
Liquor Profits and Misc Revenue	54,858	102,358	50,237	94,185
Earnings on Investments	56,700	167,137	51,900	159,811
Tuition	228,664	266,558	250,789	298,582
Timber Sales	2,556	173,415	2,870	147,390
Lottery	134,746	185,072	196,795	266,920
Proceeds of Bond Issues	0	786,525	0	1,068,439
Debt Service	—204,433	6,759	—264,213	12,463
Other Non-Tax Revenue	44,176	1,219,975	40,364	1,648,827
Total Non-Tax Revenue	379,234	3,349,428	396,807	4,164,278
Total State Revenue	8,150,478	12,065,387	9,624,796	14,496,148
Federal Revenue	1,881,032	3,051,874	2,090,184	3,443,131
Private/Local Revenue	25,130	112,130	28,529	129,213
TOTAL	10,056,640	15,229,391	11,743,509	18,068,492

Table 15

BUDGETED TREASURY FUNDS—CASH SURPLUS

By Fund Classification, Fund

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
GENERAL FUND					
General Fund	32,189,000	29,001,346	11,743,510,120	11,444,741,239	327,770,227
ACCOUNTS WITHIN THE GENERAL FUND					
Aeronautics Account	448,805	213,280	1,367,047	1,381,955	198,372
Aquatic Lands Enhancement Account	—	544,546	1,555,690	2,099,700	536
Architects License Account	177,966	256,071	375,600	470,210	161,461
Archives & Records Management Account	6,661	45,310	1,715,873	1,756,911	4,272
Business Enterprises Revolving Account	—	190,110	692,002	666,439	215,673
C E P and R I Account	2,488,488	1,472,353	(66,150)	930,000	476,203
Capitol Building Construction Account	1,670,576	1,397,454	3,935,298	5,270,000	62,752
Capitol Purchase and Development Account	709,290	880,934	1,661,699	928,000	1,614,633
Cemetery Account	8,317	480	130,731	117,870	13,341
Centennial Commission Account	—	—	251,069	188,302	62,767
Central Washington University Capital Projects Account	2,753,341	3,232,522	4,126,861	3,957,000	3,402,383
Certified Public Accountant Exam Account	—	33,590	404,990	410,148	28,432

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
Community College Capital Construction Account	1,559,386	253,875	—	253,000	875
Community Colleges Capital Projects	3,224,827	—	331,267	1,000	330,267
Convention and Trade Center Account	90,972,307	75,905,018	8,931,794	80,437,592	4,399,220
County Sales and Use Tax Account	(10,051)	915	7,894,000	7,894,000	915
Crime Victims Compensation Account	827,921	250,673	—	—	250,673
Criminal Justice Training Account	1,617,352	14,880	—	—	14,880
Death Investigations Account	—	458,327	1,065,562	933,694	590,195
DSHS Construction Account	6,717,828	14,768,131	78,616,000	93,174,000	210,131
Eastern Washington University Capital Projects Account	928,302	1,005,786	2,770,111	3,045,000	730,897
Feed and Fertilizer Account	12,197	12,208	17,600	17,306	12,502
Fire Training Construction Account	4,368,784	1,152,143	393,484	1,219,000	326,627
Fisheries Capital Projects Account	1,135,473	2,328,782	3,261,000	4,367,000	1,222,782
Flood Control Assistance Account	—	—	4,000,000	4,000,000	—
Forest Development Account	4,086,496	9,918,506	10,614,461	20,409,370	123,597
Geothermal Account	—	5,156	291,400	219,534	77,022
Handicapped Facilities Construction Account	1,933,236	4,242,406	—	4,242,000	406
Harbor Improvement Account	133,562	95,589	22,080	22,073	95,596
Hazardous Waste Control & Elimination Account	—	165,124	2,304,000	2,423,012	46,112
Health Professions Account	(7,758)	753,989	5,530,040	6,012,521	271,508
Higher Education Construction Account-1979	(2,494,123)	7,609,834	35,440,000	39,740,000	3,309,834
Higher Education Reimburseable Short Term Bond Account	—	—	22,954,000	22,954,000	—

Hospital Commission Account	155,151	141,323	1,346,604	1,336,588	151,339
Institutional Impact Account	(16,695)	48,435	350,000	375,000	23,435
Judiciary Education Account	1,065,237	—	—	—	—
Landowners Contingency Forest Fire Suppression	943,278	1,472,900	1,440,383	1,505,161	1,408,122
Litter Control Account	1,351,718	1,582,491	5,135,000	4,773,888	1,943,603
Local Improvement Revolving Account-Water Supply Facilities	353,355	10,432,004	81,016,968	87,997,487	3,451,485
Local Improvements Revolving Account-DSHS Facilities	1,633,605	1,783,395	253,286	1,290,000	746,681
Local Improvements Revolving Account-Waste Disposal	4,325,738	5,631,707	42,092,928	47,111,594	613,041
Local Jail Improvement and Construction Account	(511,827)	23,123,807	10,121,885	33,140,470	105,222
LIR Account-Public Recreation Facilities	977,644	444,790	143,660	376,000	212,450
LIR Account-Waste Disposal Facilities 1980	15,859,508	48,253,068	229,775,083	277,137,437	890,714
Marine Fuel Tax Refund	97,215	88,105	—	—	88,105
Medical Disciplinary Account	—	458,301	716,200	876,981	297,520
Millersylvania Park Current Account	7,288	7,288	—	—	7,288
Motor Transport Account	2,258,727	2,244,439	6,907,808	6,829,073	2,323,174
Municipal Sales and Use Tax Account	—	1,093	23,485,210	23,485,000	1,303
Opticians Account	98,629	101,759	—	—	101,759
Optometry Account	52,734	55,389	—	—	55,389
Outdoor Recreation Account	1,651,042	7,150,158	24,172,584	30,649,085	673,657
ORV (Off Road Vehicle) Account	1,805,236	2,583,885	3,672,246	4,915,811	1,340,320

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
Pilotage Account	13,946	918	79,500	79,948	470
Professional Engineers Account	391,333	391,489	646,060	805,688	231,861
Public Facilities Construction Loan and Grant Revolving	4,316,454	4,291,000	55,308	—	4,346,308
Public Safety and Education Account	—	—	49,869,380	49,022,752	846,628
Real Estate Commission Account	3,942,719	2,758,672	3,438,310	5,290,057	906,925
Reclamation Revolving Account	1,195,006	713,559	425,155	1,124,439	14,275
Resource Management Cost Account	193,297	8,807,180	47,959,438	52,260,021	4,506,597
Revenue Accrual Account	71,628,417	28,417	—	—	28,417
Salmon Enhancement Construction Account	3,521,393	1,523,351	1,000,000	2,500,000	23,351
Sanitarian's Licensing Account	9,997	10,022	—	—	10,022
Search and Rescue Account	38,575	40,408	110,000	110,981	39,427
Snowmobile Account	315,472	157,054	579,564	655,462	81,156
Special Grass Seed Burning Research Account	36,671	—	69,182	69,182	—
State Board of Psychological Examiners Account	32,394	34,549	—	—	34,549
State Building Construction Account	(352,578)	6,639,639	61,152,000	67,699,000	92,639
State Capitol Historical Association Museum Account	74,786	75,479	107,000	122,556	59,923
State Capitol Vehicle Parking Account	206,537	46,938	102	—	47,040
ACCOUNTS WITHIN THE GENERAL FUND					
State Educational Grant Account	15,410	47,495	85,000	40,000	92,495
State Emergency Water Projects Revolving Account	11,555,313	7,024,023	513,181	7,350,655	186,549

State Facilities Renewal Account	—	—	58,303,000	58,303,000	—
State Higher Education Construction Account	256,806	4,922,122	94,276,000	96,958,000	2,240,122
State Investment Board Expense Account	10,018	10,062	1,555,261	1,556,173	9,150
State Timber Tax Account A	956,822	462,349	317,499	—	779,848
State Timber Tax Reserve Account	2,928,342	33,421	459,774	—	493,195
Survey and Maps Account	259,425	252,915	686,944	732,087	207,772
The Evergreen State College Capital Projects Account	109,070	40,160	220,015	132,000	128,175
Timber Tax Distribution Account	—	10,000	41,490,000	40,718,159	781,841
Timber Tax Distribution Guarantee Account	10,463,390	1,546,527	—	—	1,546,527
Traffic Safety Education Account	2,334,857	—	—	—	—
Trust Land Purchase Account	2,457,319	1,946,612	7,567,947	7,665,083	1,849,476
University of Washington Building Account	344,230	1,178,955	4,590,035	5,534,000	234,990
Washington Future-Community College Capital Improvement	175,332	56,564	25,626	—	82,190
Washington State University Building Account	3,570,987	5,730,530	14,779,425	17,223,000	3,286,955
Washington State University Construction Account	12,702	12,702	—	—	12,702
Water Quality Bond Account	—	—	100,000,000	100,000,000	—
Western Washington University Capital Projects Account	442,005	840,428	3,867,063	4,011,000	696,491
Winter Recreation Program Account	101,690	117,319	194,828	310,000	2,147
TOTAL Accounts within the General Fund	276,934,903	282,563,188	1,125,639,951	1,351,613,455	56,589,684

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
SPECIAL REVENUE—MOTOR VEHICLE					
Motor Vehicle Fund	37,533,518	10,489,848	1,590,197,221	1,596,735,095	3,951,974
SPECIAL REVENUE—ALL OTHER					
Administrative Contingency Fund	1,328,892	1,310,734	5,892,521	5,844,502	1,358,753
Commercial Feed Fund	168,052	228,599	506,656	482,739	252,516
Common School Construction Fund	6,008,410	28,309,975	130,757,963	156,013,000	3,054,938
Electrical License Fund	1,241,345	2,754,537	9,014,866	7,323,588	4,445,815
Fertilizer, Agricultural, Mineral and Lime Fund	135,293	202,888	452,960	435,812	220,036
Forest Reserve Fund	—	—	25,164,000	25,164,000	—
Game Special Wildlife Account	4,444	3,393	304,056	296,561	10,888
Grade Crossing Protective Fund	1,580,450	1,348,346	287,915	200,000	1,436,261
Highway Safety Fund	8,832,104	2,028,200	50,993,652	51,114,115	1,907,737
Hood Canal Bridge Account	5,546,163	101,296	186,007	—	287,303
Liquor Excise Tax Fund	2,813,620	2,671,083	17,962,400	17,962,400	2,671,083
Motorcycle Safety Education Account	35,720	49,908	145,474	192,645	2,737
Nursery Inspection Fund	271,172	426,995	725,558	631,396	521,157
Public Service Revolving Fund	3,848,949	4,500,603	17,742,121	20,684,692	1,558,032
Puget Sound Capital Construction Account	8,687,509	4,191,892	47,178,726	42,928,101	8,442,517
Puget Sound Ferry Operations Account	—	214,983	48,024,086	47,371,084	867,985
Puget Sound Reserve Account	173,411	353,369	4,148,213	3,958,145	543,437
Recreational Vehicle Account	58,147	478,113	417,759	—	895,872

Rural Arterial Trust Account	—	4,891,039	17,744,755	21,042,261	1,593,533
Seed Fund	131,040	108,063	1,028,170	984,589	151,644
State Game Fund	8,580,893	5,071,475	66,878,372	68,858,136	3,091,711
State Patrol Highway Account	365,157	12,552,648	121,849,117	127,029,439	7,372,326
Stream Gaging Basic Data Fund	47,108	24,608	211,774	200,000	36,382
Unemployment Compensation Administration Fund	725,413	2,762,475	110,162,705	104,596,786	8,328,394
Urban Arterial Trust Account	9,921,037	12,150,326	69,827,305	68,485,543	13,492,088
Vessel Gear License and Permit Reduction Fund	(122,864)	216,077	—	—	216,077
Voluntary Action Center Account	—	654	—	—	654
TOTAL Special Revenue - All Other	60,381,465	86,952,279	747,607,131	771,799,534	62,759,876
BOND RETIREMENT AND INTEREST					
Common School Building Bond Redemption Fund-1967	1,942,962	127,849	6,971,488	6,876,110	223,227
Community College Capital Construction Bond Retirement	472,033	637,867	16,487,149	16,067,247	1,057,769
Community College Capital Improvement Bond Redemption Fund	367,867	485,124	7,426,240	7,508,345	403,019
Community College Refunding Bond Retirement Fund-1974	535,822	815,817	9,403,137	9,457,123	761,831
Emergency Water Projects Bond Redemption Fund-1977	20,367	26,832	2,612,282	2,594,770	44,344
Ferry Bond Retirement Fund 1979	4,319,992	6,722,046	29,640,319	29,142,170	7,221,095
Fisheries Bonds 1977 Bond Redemption Fund	14,346	15,811	3,466,799	3,476,774	5,836

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
General Adminstration Bond Redemption Fund	23,627	360,316	665,934	29,425	996,825
General Obligation Bond Retirement 1979	895,509	42,016	208,999,872	208,589,280	452,608
Higher Education Bond Retirement Fund of 1977	35,400	66,549	15,063,799	15,087,751	42,597
Higher Education Bond Retirement-1979	93,926	98,481	32,487,498	32,531,592	54,387
Higher Education Refunding Bond Retirement Fund of 1977	73,882	95,777	8,808,897	8,746,565	158,109
Highway Bond Retirement Fund	16,966,098	25,371,050	150,777,946	138,861,113	37,287,883
Indian Cultural Center Construction Bond Redemption Fund	531	9,197	243,406	234,600	18,003
Juvenile Correctional Institutional Bldg Bond Redemption	334,893	—	—	—	—
Loan Principal and Interest Fund	—	—	—	—	—
Office-Laboratory Facilities Bond Redemption Fund	16,127	21,492	290,879	276,830	35,541
BOND RETIREMENT AND INTEREST					
Outdoor Recreation Bond Redemption Fund-1967	3,269,858	3,414,879	6,569,332	6,276,470	3,307,741
Public School Building Bond Redemption Fund-1961	341,428	341,428	—	—	341,428
Public School Building Bond Redemption Fund-1963	4,627,702	—	—	—	—

Public School Building Bond Redemption Fund-1965	107,893	145,901	2,458,323	2,470,955	133,269
Recreation Improvements Bond Redemption Fund	333,689	442,925	5,881,072	5,990,090	333,907
Salmon Enhancement Construction Bond Retirement Fund	33,206	45,016	4,661,918	4,666,130	40,804
Social and Health Services Bond Redemption Fund of 1976	316,936	419,969	9,556,904	9,480,564	496,309
Social and Health Services Facilities Bond Redemption Fund	176,821	233,300	3,687,473	3,734,611	186,162
Spokane River Toll Bridge Account	261,143	203,265	915,884	886,400	232,749
State Building and Higher Ed Bond Redemption Fund-1965	141,739	190,583	3,141,318	3,215,565	116,336
State Building and Higher Ed Bond Redemption Fund-1967	297,894	389,480	9,994,822	10,240,447	143,855
State Building and Parking Bond Redemption Fund-1969	2,670,236	2,849,751	2,278,415	2,456,880	2,671,286
State Building Authority Bond Redemption Fund	555,314	740,894	9,349,879	9,562,105	528,668
State Building Bond Redemption Fund-1975	37,571	71,987	1,406,327	1,358,440	119,874
State Building Bond Redemption Fund-1967	715,674	766,214	762,814	652,100	876,928
State Building Bond Redemption Fund-1973	150,380	198,613	3,755,136	3,824,535	129,214
State Building Bond Redemption Fund-1973A	12,611	16,294	385,957	375,371	26,880
State Building Construction Bond Redemption Fund	193,926	193,926	—	—	193,926

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
State Facilities Renewal Bond Retirement	—	—	6,465,000	6,356,000	109,000
State Higher Education Bond Redemption Fund-1973	198,220	261,338	4,346,042	4,374,678	232,702
State Higher Education Bond Redemption Fund-1974	40,548	54,313	1,237,017	1,201,300	90,030
University of Washington Bond Retirement Fund	(24,092)	2,046,313	227,522	—	2,273,835
Washington State University Bond Retirement Fund	4,551	6,261	563,450	559,295	10,416
Washington State University Bond Retirement Fund	2,966,422	2,617,709	(904,388)	—	1,713,321
Waste Disposal Facilities Bond Redemption Fund	1,184,681	160,646	99,035,872	98,604,041	592,477
Water Pollution Control Facilities Bond Redemption Fund	108,451	144,356	3,946,940	4,015,067	76,229
Water Quality Bond Retirement	—	—	50,000	—	50,000
Water Supply Facilities Bond Redemption Fund	532,874	766,638	11,797,062	11,974,758	588,942
1975 State Higher Education Bond Retirement Fund	100,718	131,598	2,159,144	2,173,165	117,577
1975 University of Washington Hospital Bond Retirement	59,036	78,984	1,157,759	1,165,915	70,828
1976 Fisheries Bond Retirement Fund	37,731	49,500	798,589	766,136	81,953

1977 Fire Service Training Center Bond Retirement Fund	4,979	15,530	1,617,821	1,626,243	7,108
TOTAL Bond Retirement and Interest	45,571,522	51,894,735	690,649,049	677,486,956	65,056,828
WORKING CAPITAL					
Administrative Hearings Revolving Fund	74,882	136,954	8,280,362	8,404,131	13,185
Auditing Services Revolving Fund	171,625	251,681	7,887,948	7,832,163	307,466
Centennial Partnership Fund	—	—	—	—	—
Coastal Protective Revolving Fund	61,471	—	71,887	42,926	28,961
Data Processing Revolving Fund	8,077,426	7,799,460	86,847,202	87,724,909	6,921,753
Department of Personnel Service Fund	572,607	1,243,043	14,387,790	11,501,003	4,129,830
General Administration Facilities & Services Revolving Fund	(163,400)	77,125	20,258,369	19,432,557	902,937
General Administration Management	226,576	441,665	5,842,148	5,791,706	492,107
Higher Education Personnel Board Service Fund	23,604	18,472	2,110,537	1,780,456	348,553
Legal Services Revolving Fund	(8,589)	695,925	31,710,914	32,068,395	338,444
Municipal Revolving Fund	234,475	277,934	13,447,104	13,650,208	74,830
Salary and Health Increase-Dedicated Funds	(145,309)	—	47,707,448	47,707,448	—
Secretary of State Revolving Fund	79,829	22,266	412,458	417,170	17,554
State Employees' Insurance Fund	1,636,831	2,077,432	2,293,987	1,821,213	2,550,206
State Treasurer's Service Fund	4,995,533	4,392,472	7,610,029	7,702,802	4,299,699
TOTAL Working Capital	15,837,561	17,434,429	248,868,183	245,877,087	20,425,525
BUSINESS ENTERPRISE					
Liquor Board Revolving Fund	2,681,146	2,568,671	132,783,894	132,106,680	3,245,885

	6/30/83 Actual Balance	6/30/85 Estimated Balance	1985-87 Proposed Revenue	1985-87 Proposed Expenditures	6/30/87 Estimated Balance
TRUST AND AGENCY					
Accident Fund	—	—	75,787,079	75,787,079	—
Business Enterprises Revolving Fund	160,489	—	—	—	—
Deferred Compensation Revolving Fund	760,457	1,084,831	530,350	1,240,134	375,047
Gambling Revolving Fund	2,642,143	1,544,620	7,674,259	7,235,426	1,983,453
Medical Aid Fund	—	—	73,889,824	73,889,824	—
Plumbing Certificate Fund	314,280	301,991	331,973	435,965	197,999
Pressure Systems Safety Fund	307,930	202,784	1,293,767	1,069,477	427,074
Public Facilities Construction Loan Account	1,348,993	555,147	304,158	242,077	617,228
Radiation Perpetual Maintenance Fund	—	32,692	—	—	32,692
Retirement System Expense Fund	509,748	1,670,123	13,574,466	14,393,691	850,898
Teacher's Retirement Fund	—	—	—	—	—
Volunteer Firemen's Relief and Pension Fund	1,839,265	2,536,797	958,023	205,628	3,289,192
Wash. Library Network Computer System Revolving Fund	448,278	126,000	13,599,883	12,856,731	869,152
TOTAL Trust and Agency	8,331,583	8,054,985	187,943,782	187,356,032	8,642,735
TOTAL TREASURY FUNDS—CASH SURPLUS	479,460,698	488,959,481	16,467,199,331	16,407,716,078	548,422,734

* * *

EXHIBIT 24

Exhibit No. — entitled Summary Report With Respect to SB 3677 was prepared by the Department of Revenue in anticipation of possible revenue legislation which might have been submitted to the 49th session of the Washington State Legislature in 1985. The possibility of such legislation was proposed by Governor Booth Gardner in a public announcement. A draft of such legislation to which the exhibit report is directed was prepared by the Office of the Code Reviser. The legislation, however, was not formally introduced and thus was not considered by any legislative committee in hearing or in other action nor was it acted upon by either house of the Washington State Legislature.

SENATE BILL NO. 3677

SUMMARY:

This bill provides a guaranteed source of funding for the budget stabilization account and additional revenues for the 1985-87 biennium.

The budget stabilization account is funded by extending the retail sales tax to motor vehicle fuel. The tax is computed on the basis of the price at the pump, including state and federal taxes imposed at the distributor level. The tax is estimated to raise $375 million during the 1985-87 biennium. It will be effective June 1, 1985.

When the budget stabilization account reaches $300 million the state sales tax rate will automatically be reduced to 6 percent. Funds in the budget stabilization account may be appropriated by majority vote of the legislature.

The bill also increases the B&O tax rate on services from 1.5 percent to 2 percent, effective May 1, 1985. This increase will raise an additional $6.3 million in the 1983-85 biennium and $153.6 in the 85-87 biennium. The regular B&O rate on medical services will be reduced to 1.5 percent for medical practitioners subject to the additional 1 percent B&O tax imposed to fund Senator McDermott's health care cost containment program, Senate Bill 3320.

The revenues to be raised by this bill are as follows (in millions):

	83-85	85-87
Budget Stabilization Acct.		
Sales tax m.v. fuel	$-0-	$300
General Fund		
Service B&O tax	6.3	160.3
S.B. 3320 (eff. 7-1-86)	-0-	(6.7)
Sales tax reduction (eff. 1-1-87)		(79.0)
	$6.3	$74.6

Department of Revenue
April 8, 1985
Contact Matt Coyle, Deputy Director
753-4196

SENATE BILL 3677

Section by Section Analysis

Section 1. Eliminates the sales tax exemption for motor vehicle and special fuel. The sales tax will be computed on the basis of the price at the pump, including state and federal excise taxes imposed at the distributor level.

Section 2. Removes the corresponding use tax (RCW Ch. 82.12) exemption for motor vehicle and special fuel.

Section 3. Increases the B&O tax rate on real estate commissions from 1.5 percent to 2 percent. This B&O rate has historically been the same as the service rate. Effective May 1, 1985.

Section 4. Increases the B&O tax rate on services from 1.5 percent to 2 percent, effective May 1, 1985. Provides for a reduction in the B&O rate to 1.5 percent for medical practitioners subject to

the additional 1 percent B&O tax used to fund health care costs under SB 3320.

Section 5. Provides that sales tax receipts from motor vehicle and special fuels are to be deposited in the budget stabilization account.

Section 6. Provides that use tax receipts from motor vehicle and special fuels are to be deposited in the budget stabilization account.

Section 7. Provides for a reduction in the sales tax rate from 6.5 percent to 6 percent when the budget stabilization account reaches $300 million. (See Sec. 12)

Section 8. A technical correction. Deletes references to the OFM Director's duty to provide for transfers and repayments to the budget stabilization account. (See Subsection 1(e)) This authority is no longer needed.

Section 9. Amends RCW 43.88.525 to create a new budget stabilization account in the state treasury. Deletes references to the previous budget stabilization account and attendant duties which are no longer necessary.

Section 10. Amends RCW 43.88.535 to provide that funds in the budget stabilization account may be appropriated by majority vote rather than a sixty percent vote. Deletes authority to waive deposits in the account in the event of an expenditure from the account.

Section 11. Repeals RCW 43.88.530 and .540, dealing with the former budget stabilization account. Because revenues for the account are guaranteed from the sales tax on motor vehicle fuel, these provisions are no longer necessary.

Section 12. Provide a $300 million cap for the budget stabilization account. When the balance in the account reaches $300 million, the general sales

tax rate is reduced from 6.5 percent to 6 percent, and sales and use tax receipts from motor vehicle and special fuel become available to the general fund.

Section 13. Provides for effective dates.
Sales and use tax on motor vehicle fuel—June 1, 1985
½ percent B&O tax increase—May 1, 1985

SUPREME COURT OF THE UNITED STATES

No. 85-2006

National Can Corporation, et al.,

Appellants

v.

Washington State Department of Revenue

APPEAL from the Supreme Court of Washington,

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. This case is consolidated with 85-1963, *Tyler Pipe Industries, Inc. v. Washington Department of Revenue* a total of one hour is allotted for oral argument.

October 6, 1986

Justice Powell and Justice Scalia took no part in the consideration or decision of this petition.